

(2009) 01 MAD CK 0146

In the Madras High Court

Case No : Habeas Corpus Petition No. 1044 of 2008

Senthil Kumar (a) Senthil

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 3(2), 4(1), 5(1), 6(1), 7(1)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2009) CriLJ 1243 : (2009) 2 MLJ 482

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for C.C. Chellappan, for the Appellant; N.R. Elango, APP, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—The petitioner, who has been detained as "Immoral Traffic Offender" u/s 3(1) of the Tamil Nadu Prevention of

Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers

and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), has filed this Habeas Corpus Petition, praying to quash the detention order and set

him at liberty.

2. It is alleged that the petitioner, under the guise of getting good employment in the export company for good salary, brought poor and innocent

girls from Andhra Pradesh with his associates and by keeping them in a locked house, induced and forced them to indulge in prostitution business

and also took out a house for rent and is living on the earnings of prostitution.

3. Against the detenu/petitioner besides the ground case, an adverse case has also been reported. Both the adverse case and the ground case are

registered for the offences punishable under Sections 3(2)(a), 4(1), 5(1)(a), 6(1) and 7(1) of the Immoral Traffic Prevention Act.

4. Heard Mr. R. Sankarasubbu for the petitioner and Mr. N.R. Elango, Additional Public Prosecutor for the State.

5. The detention order has been challenged on various grounds. The main ground of attack to the detention order by Mr. R. Sankarasubbu,

learned Counsel appearing for the petitioner, is that in the grounds of detention, the detaining authority has stated that in the ground case registered

in Cr. No. 72/2008 of the Anti Vice Squad Police Station, the Police have rescued a girl namely Devaki @ Mownika Devi, who was kept in a

locked room, and produced her before the VI Metropolitan Magistrate Court, Egmore, Chennai and while the accused/petitioner was remanded

to judicial custody till 27.6.2008, the rescued girl Devaki @ Mownika Devi was sent to Government Home, Mylapore, but the respondent Police

have not furnished the copy of the order passed by the VI Metropolitan Magistrate, Egmore, Chennai to the detenu to show that the said girl was

produced before the Court and sent to the Government Home, Mylapore, Chennai. It has further been submitted on the part of the petitioner that

he has specifically requested the first respondent in his representation dated 5.7.2008 to furnish him the copy of the order passed by the VI

Metropolitan Magistrate, Egmore, Chennai in the ground case in Cr. No. 72/2008, in respect of production of the said girl Devaki @ Mownika

Devi before the Court in the above said case, but the same has not been furnished to him till date and there is no explanation, whatsoever, offered

on the part of the respondents, for non-supply of the said document to the detenu, which has prevented the detenu from making an effective

representation.

6. It has further been argued on the part of the petitioner that in the 161 Cr.P.C. statement said to have been recorded from Devaki @ Mownika,

there was no signature of her's and the special report is signed by the Inspector.

7. On the part of the respondents, Mr. N.R.Elango, the learned Additional Public Prosecutor, would submit that the document, which has been

sought for by the petitioner/detenu is not at all an important document and non-

supply of the same to the detenu will not vitiate the order of detention. The learned Additional Public Prosecutor would further submit that liberty of an individual has to be subordinated, within reasonable

bounds, to the common good of the people and the interference of the Court to the orders of detention must be an exception rather than the rule.

In support of his contentions, the learned Additional Public Prosecutor would rely on a judgment of the Honourable Apex Court in State of

Maharashtra and Ors. v. Bhaurao Punjabrao Gawande (2008) 2 SCC (Cri) 128, wherein it has been held:

The Court must be conscious and mindful of the fact that the jurisdiction to order preventive detention is a "suspicious jurisdiction" i.e. Jurisdiction

based on suspicion and an action is taken "with a view to preventing" a person from acting in any manner prejudicial to certain activities

enumerated in the relevant detention law. Interference by a court of law at that stage must be an exception rather than the rule and such an exercise

can be undertaken by a writ court with extreme care, caution and circumspection. A detenu cannot ordinarily seek a writ of mandamus if he does

not surrender and is not served with an order of detention and the grounds in support of such order.

Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were

conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve

individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand.

Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black-marketing activities, etc.

demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.

In considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the

fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity is an unhappy necessity

it was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the

duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the

responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification.

8. On the other hand, the learned Counsel appearing for the petitioner, insisting on the point that non-supply of the documents which are having

direct bearing on the detention order, would vitiate the order of detention, has relied upon a judgment of the Honourable Apex Court in Union of

India v. Ranu Bhandari 2008 (6) Supreme 601, wherein it has been held that "on account of the non-supply of the documents, detenu prevented

from making an effective representation against his detention."

9. The specific stand of the respondents is that in the ground case, the Police have rescued a girl by name Devaki @ Mownika, who was kept in a

locked room at the time of arrest of the detenu and she was also produced before the learned VI Metropolitan Magistrate, Egmore, Chennai, who

sent her to Government Home, Mylapore, Chennai. When the allegation is that the petitioner has induced innocent, poor girls to indulge in

prostitution and also forced them into the flesh-trade, not only the fact of rescuing a girl, who is alleged to be in the illegal custody of the petitioner,

but also the order passed by the Magistrate, while sending her to the Government Home, after enquiring her, attains vital importance and there

cannot be any doubt that such document is a vital document and the detaining authority ought to have supplied the copy of such a document to the

detenu. However, in spite of request of the petitioner, no such document has been furnished to him and there is no explanation offered on the part

of the respondents, as to why they have not furnished the copy of the said document to the detenu. The non-supply of copy of such a vital

document has prevented the detenu from making an effective representation to the authorities concerned.

10. True, individual liberty is subordinate to the common good of the people, as has been held by the Honourable Apex Court in Bhaurao

Punjabrao Gawande case (supra), cited by the learned Additional Public Prosecutor. But, if, while passing the order of detention, the basic

principles are not adhered to by the authorities, thus depriving the detenu from making effective representation to the authorities, the same will

vitiate the order of detention, as has been held by the Honourable Apex Court in its subsequent and latest judgment in Ranu Bhandari's case

(supra), cited by the learned Counsel for the petitioner.

11. When the materials placed on record would show that the detenu was prevented from making an effective representation against his detention,

the impugned order of detention would get vitiated on this ground.

12. The other ground on which much reliance has been placed on the part of the petitioner is that the initial arrest of the petitioner was not informed

to his family members and with regard to the arrest information, the respondent Police have furnished a telegram in the booklet, but the same is not

a certified copy and the police have not furnished a telegram receipt and, therefore, on this ground also, the order of detention gets vitiated.

13. For this, no explanation, much less a satisfactory one, is coming forth from the respondents except arguing that the arrest has been intimated to

the family members of the petitioner. In the absence of any valid material on record to substantiate the case of the respondents, we are unable to

accept that the arrest of the petitioner was intimated to the family members of the petitioner. Therefore, even on this ground, the impugned order of

detention gets vitiated.

For all the above reasons and discussions, we hold that the impugned order of detention is bad in law and, accordingly, this Habeas Corpus

Petition is allowed and the impugned order of detention is quashed. The detenu is ordered to be set at liberty forthwith, if he is not required in any

other case.