

(2015) 09 MAD CK 0164
In the Madras High Court
Case No : H.C.P. (MD) No. 647 of 2015

Senthilkumari

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226

Penal Code, 1860 (IPC) — Section 109, 120(b), 147, 148, 302

Citation : (2015) 4 MLJ(Cri) 446

Hon'ble Judges : S. Nagamuthu and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : Jegadeesh Pandian, Advocate, for the Appellant; C. Ramesh, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner in H.C.P.(MD) No. 647 of 2015 is the wife of the detenu and she has filed the Habeas Corpus Petition under Article 226 of the Constitution of India to set aside the Detention Order No. 54/BCDFGISSSV/2015 dated 13.04.2015, passed by the second respondent and to produce the detenu Sudalaimuthu, S/o. Padmanaban, aged about 30 years, before this Court and set him at liberty. Along with the present Habeas Corpus Petition, it is seen that the wife of the detenu has filed an affidavit, challenging the proceedings designating her husband as "GOONDA". Further, the petitioner has enclosed a copy of Detention Order No. 54/BCDFGISSSV/2015 dated 13.04.2015 at Page No. 1 and copy of Grounds of Detention at Page No. 2, along with the affidavit itself. In the said Detention Order itself, it is clearly stated as follows:

i) An adverse case has been registered in Crime No. 762 of 2014 under Sections 147 ,148 , 120(b) , 302 and 109 I.P.C. in B6 Jaihindpuram Police Station, as against the detenu, and his associates, regarding the murder of Nagaraj, Karuppu @ Karuppu Raja and Karthik.

ii) Further, a ground case has been registered in Crime No. 310 of 2015, for the

alleged the offences under Sections 392 r/w. 397 and 506(ii) I.P.C., in B6 Jaihindpuram Police Station, regarding the robbery of Rs. 1,200/- from one Suriyakannan and the detenu took out a knife kept hidden in his waist and threatened, stating that he would murder, if any one tried to catch him and due to his activities, people ran away out of fear and traffic also disrupted and the shop keepers closed their shops and the detenu has also threatened that he would murder the person, if any one informed to the police about the said incident.

2. Further, in the said Grounds of Detention, it is clearly pointed out by the second respondent that the detenu has been arrested and the case properties, namely, knife and Rs. 100/- have been seized from him under the Athatchi and the detenu has been remanded by the learned Judicial Magistrate No. 4, Madurai on 17.03.2015. Further, in the Grounds of Detention, it is clearly observed that the detenu already involved in the said adverse case and the ground case and the detenu will indulge in future activities which will be prejudicial to the maintenance of public order and as such he is branded as a "GOONDA" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. Hence, from the clear reading of the said Detention Order and grounds of detention enclosed with the Habeas Corpus Petition itself, it is seen that the second respondent has mentioned the relevant details and also specifically stated there is a compelling necessity to detain him from indulging in such further activities in future, which are prejudicial to maintenance of public under the provisions of the Tamil Nadu Act, 14 of 1982.

3. Further, in order to substantiate the various averments made in the Grounds of Appeal, the second respondent has filed various details and records, in the booklet containing various pages upto Page No. 192, and also established that there are bona fide reasons for coming to the conclusion to detain the detenu under the Tamil Nadu Act 14 of 1982.

4. Further, in the affidavit at para No. 10, the petitioner has stated that the Sponsoring Authority without perusing the entire material which contains 255 pages, simply passed the said detention order. Hence, it is crystal clear that the petitioner is aware of the entire materials for branding the detenu as a Goonda. In such circumstances, the petitioner cannot submit that the impugned detention order has been passed in a mechanical manner and there is no necessity for the second respondent to detain the detenu under the Detention Order. Further, in Para 9 in the affidavit, the petitioner has stated that in the booklet in page No. 125, a record has been filed wherein, it is stated that the accused Murugesan has filed an Anticipatory Bail application before this Court in CrI. O.P. No. 18531 of 2014 in connection with the case, in Crime No. 762 of 2014. However, on a perusal of the booklet details, and particulars, to substantiate the detention of the petitioner's husband, it is seen that the Detaining Authority has submitted and relied upon relevant records.

5. The learned counsel for the petitioner has relied on the following judgments in

support of his contentions:

i) In the decision of Honourable Supreme Court, reported in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, , it is only held as follows:

"Summing up the position as he gathered from the earlier cases, the learned Judge observed:

... "Public Order" is synonymous with public safety and tranquillity: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.

...We have here a case of detention under R.30 of the Defence of India Rules which permits likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings.

...The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them.

...The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State.

By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

ii) In the decision of Hon"ble Supreme Court, reported in the case of K.K. Saravana Babu Vs. State of Tamil Nadu and Another, , it is observed as follows:

".. Even assuming the allegations in the criminal cases against the appellant-detenu, even then by no stretch of imagination, can the offences committed by the detenu be called prejudicial to public order.."

iii) In the decision of Hon"ble Supreme Court, reported in the case of Arun Ghosh Vs. State of West Bengal, , it is specifically stated as follows:

"The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society."

iv) In the decision of Hon"ble Supreme Court, reported in the case of Sudhir Kumar Saha Vs. The Commissioner of Police, Calcutta and Another, , it is observed as follows only:

"The ground stated in support of the detention can not amount to a disturbance of the maintenance of "public order".

From the record it does not appear that the petitioner was prosecuted for any of the offences mentioned earlier.

.. The legal position relating to the point in issue was again recently considered by this Court in Arun Ghosh Vs. State of West Bengal, . Therein it was observed that "public order" is the even tempo of the life of the community taking the country as a whole or even a specified locality."

v) In the decision of Hon"ble Supreme Court, reported in the case of Dipak Bose alias Naripada Vs. State of West Bengal, , it is observed as follows:

"Constitution of India, Articles 21 and 22 , Panic and horror caused whether amounted to disturbance of public order."

vi) In the decision of Hon"ble Supreme Court, reported in the case of In Re: Sushanta Goswami and Others, , it is observed as follows:

"acting with large number of associates and committing acts which could have led to disturbance of public order, is a ground relevant for detention."

In the present case also, it is seen that the Detaining Authority has passed the impugned order of detention after taking into consideration all the relevant aspects of the matter.

vii) In the decision of Hon"ble Supreme Court, reported in the case of Mrs. T. Devaki Vs. Government of Tamil Nadu and others, , it is held as follows:

"In the present case there is no material on record to show that the reach and potentiality of the single incident of attempted murderous assault on the Minister was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality."

However, in the present case, it is found that there are enough material on record to disturb the normal life of the people in the locality or disturb general peace and tranquillity in the locality. Further, there is no undue delay made on behalf of the respondents in considering the representation dated 13.04.2015, as per the proforma filed on behalf of the respondents.

6. It is pertinent to note that in a decision of this Court reported in the case of V. Jagadees-kumar v. Government of Tamil Nadu 2010 (3) CTC 246, it is clearly observed as follows:

"Inference in preventive detention orders by the Courts in Habeas Corpus

Petitions was considered by the Supreme Court in the decision reported in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, . The grounds on which the Courts may interfere in the detention orders are held to be very limited, which read thus:

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds, or
- (v) that the authority which passed it had not authority to do so."

In the present case also, it is found that the Detaining Authority has passed the Detention Orders based upon the relevant material records, and also for a valid purpose.

7. It is seen that the copies which form the ground for detention has been supplied and no prejudice has been caused to the detenu. Further, the detenu himself has made an acknowledgement that the Detention Order and grounds of detention have been supplied to him and therefore it could not be treated as non-furnishing of a document or furnishing of a document the translation of which is needed. The duty of Court is to see that efficacy of safeguards provided in the law of preventive detention is not lost in mechanical, routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. However, in the present case, it is found that the second respondent has passed the impugned order, in accordance with law.

8. Further, the Court will not interfere, if the detention order established that there are materials for the Detaining Authority to arrive at his subjective satisfaction for passing of Detention Order. Further, the material records have been supplied to detenu and available in the paper book and the petitioner cannot claim that the detenu has been prejudiced in any way. Detention can be based, provided the Detaining Authority has the relevant material before it, so as to come to a reasonable opinion that from the surrounding circumstances, coupled with the incident in question, a satisfaction as to the future illegal activities of the detenu could be inferred. It is only those documents which are relied upon by the Detaining Authority are the relevant documents which have to be furnished to the detenu. The other documents which are merely "referred to" documents need not be supplied and the detenu has to prove the prejudice caused because of the non-supply of the "referred to" documents. There could be no question of prejudice, when the detenu referred to those orders in the representations.

9. Activities of gang, resulting in sense of insecurity for people belonging to the town. Detention Order is valid for maintenance of public order. There are

compelling reasons for preventive detention of the detenu. Court's interference not called for. The Court can only examine whether the grounds disclosed are relevant to the object of the preventive detention Act. It cannot act as a Court of Appeal.

10. When the subjective satisfaction is well based on the case which either ended in conviction or which the accused is facing trial at the time of passing the orders, the said satisfaction arrived at by the authority cannot be termed as wrong. In such circumstances, the order of the Detaining Authority has to be upheld. There are no material inconsistencies affecting validity of the impugned order. Detention Order can be justified, if a reasonable inference can be drawn from detenu's past conduct, about likelihood of his repeating the prejudicial activity, in future. For the above mentioned reasons, this Court is of the view that there is no infirmity in the Order of Detention passed against the detenu, by name, Sudalaimuthu, S/o. Padmanaban, aged about 30 years and no case is made out to interfere with the Detention Order No. 54/BCDFGISSSV/2015 dated 13.04.2015 and the Habeas Corpus Petition is dismissed.