
(2009) 09 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (Criminal) . No. 331 of 2009 (S)

Shobhana

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2009) 09 KL CK 0012

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : Sangeetha Lakshmana, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner has come to this Court with this petition challenging Ext.P 1 order of detention passed by the second respondent u/s 3(1) of the Kerala Anti-Social Activities (Prevention) Act hereinafter referred to as "KAAPA". The petitioner is the wife of the detenu, Chandran. Proceedings were initiated on the basis of Ext.P 3 report dated 1-7-2009 submitted by the Superintendent of Police, Malappuram. In the said report, the Superintendent of Police had reported to the second respondent that the detenu is a known goonda. He was involved in two specific crimes. The first one is Crime No. 509/2007 of Parappanangadi Police Station. He was allegedly found to carry in his possession for sale 325 grams of ganja in small packets. He was prosecuted and on the plea of guilty raised by him, he was found guilty, convicted and sentenced as per judgment dated 29-7-2008 of the Judicial First Class Magistrate-I, Parappanangadi in C.C.No.106/2008.

2. After the conviction in that case, the detenu was involved in the second case which is registered as Crime No. 176/2009 of the same police station. The allegations in that crime is that the petitioner was found on 15-5-2009 to be in possession of 37 grams of ganja and Rs. 6500/-. He was arrested in that crime.

The offence being bailable, he was released on bail on 18.05.09.

3. The second respondent, District Magistrate, on a consideration of the report submitted to him by the third respondent, entertained the requisite twin satisfactions u/s 3(1) of the KAAPA. He was satisfied that the detenu is a known goonda falling within the sweep of the expression in Section 2(o) of the KAAPA. He was further satisfied from the past conduct of the accused that his detention was necessary to prevent him from indulging in such anti-social activities. It is accordingly that the impugned order of detention dated 8-7- 2009 was passed. The detenu was arrested on 19-7-2009 in execution of the order. The requisite approval was granted on 20-7-2009 by the first respondent u/s 3(3) of the KAAPA. It is submitted that the Advisory Board has already given its opinion on 7-9-2009. It is not clear whether the order of confirmation u/s 10(4) of the KAAPA has been passed by now.

4. We have heard the learned Counsel for the petitioner M Rs. Sangeetha Lakshmana and the learned Additional Director General of Prosecutions. The learned Counsel for the petitioner assails the impugned order on the following grounds:

1) There is no sufficient and proper application of mind by the detaining authority before passing the impugned order u/s 3(1) of the KAAPA, as revealed from the fact that even the name of the detenu is incorrectly described in one portion of the order of detention.

2) The detaining authority has erred grossly and grievously in not advertent specifically to the order granting bail in Crime No. 176/2009.

5. We have considered the contentions raised. No dispute is raised and there can possibly be no dispute that the detenu falls within the sweep of the expression drug offender in Section 2(i) of the KAAPA. Consequently, he falls within the inclusive later limb of the expression goonda of Section 2(j) of the KAAPA. In the light of the undisputed circumstances that the detenu has once been convicted for the offence u/s 20(b) of the N.D.P.S. Act, he falls squarely within the definition of known goonda in Section 2(o)(i) of the KAAPA.

6. The objective initial threshold satisfaction that the detenu is a known goonda has thus been entertained by the detaining authority validly. No serious contention is raised to assail this conclusion on the initial objective satisfaction.

7. The counsel contends that the detaining authority, after entertaining the initial objective satisfaction, must have alertly applied its mind to the circumstances to decide whether the latter subjective satisfaction u/s 3(1) of the KAAPA can be entertained or not. It is the contention of the counsel that there is no proper application of mind before the said latter subjective satisfaction was entertained by the detaining authority.

8. First of all it is contended that the detenu is named as Musthafa in para.8 of Ext.P 1, the order of detention. In the counter affidavit filed by the 2nd

respondent in para.10, it is submitted that it was an inadvertent clerical error in having misspelled the name of the detenu - Chandran as Musthafa in Ext.P 1 order. We have read the entire order Ext.P 1. A holistic and total reading of the entire order Ext.P 1 along with the grounds of detention and the documents appended must unmistakably and inevitably lead any prudent mind to accept the contention of the respondent that the said inadvertent error in the description of the name of the detenu in para.8 alone of Ext.P 1 cannot and does not convey that there was no proper application of mind. Though dissatisfied that such an error has crept into such a vital order which virtually denies a person of his personal liberty, the conclusion appears to be inevitable that such error cannot be held to be indicative of absence of application of mind. Officials in a republic wedded to rule of law, dealing with such a vital and sensitive jurisdiction as to authorise the preventive detention of a citizen without trial cannot afford to commit such inadvertent errors even. But be that as it may, we are satisfied that the said error does not at all betray or reveal non application of mind.

9. It is secondly contended that even though admittedly the detenu is on bail in Crime No. 176 of 2009, the detaining authority has not applied his mind to that relevant aspect. The order granting bail to the detenu by the Magistrate is not placed before the detaining authority (2nd respondent) by the sponsoring authority (3rd respondent). A reading of the impugned order, grounds of detention and the documents clearly reveal that the order granting bail has not been seen and perused by the detaining authority. Relying on the decision of this Court in *Sulekha v. State* 2003 KHC 59 and the precedents of the Supreme Court referred to therein, the learned Counsel for the petitioner contends that omission to specifically refer to the order granting bail reveals absence of application of mind.

10. The learned Addl. Director General of Prosecution meets this contention by advancing the argument that the offence u/s 20b of the N.D.P.S Act alleged against the detenu in Crime No. 176 of 2009 is a bailable offence. The fact that he was granted bail and is on bail is specifically referred to in paragraphs 5 and 6 of the impugned order. The learned Additional Director General of Prosecution contends that when the offence is bailable and the detaining authority has referred to the fact that the detenu has been released on bail, it is idle to contend that the order of bail has not been perused by the detaining authority. The learned Additional Director General of Prosecution further contends relying on the intimation issued to the police by the Magistrate dated 03.07.2009 in Crime No. 176 of 2009, which is produced as page 54 of the paper book, that the fact that the detenu has been released was intimated and that intimation was received by the Station House Officer. Mind of the authority has been applied to the said document. That document does not reveal that any condition has been imposed. The learned Addl. D.G.P contends that any person versed in law can even without specifically perusing the order granting bail, know and understand that no condition at all has been imposed by the Magistrate while granting bail in a bailable offence. In these circumstances, the fact that the offence is bailable

and the fact that bail has been granted and the further fact that the detaining authority had adverted to and stated that the accused is on bail is sufficient to indicate application of mind. The learned Addl. D.G.P contends that *Sulekha v. State* (supra) cannot, in these circumstances, be of any assistance to the petitioner herein.

11. We agree with the learned Addl. D.G.P. The offence is bailable. Bail has been granted. Even without anything more, it is very clear that no condition has been imposed while granting bail. Elementary awareness of the legal principles must convey that no conditions would have been imposed while granting bail. Moreover the official memorandum has actually been perused also and has been relied on as a document by the detaining authority. That document also does not reveal imposition of any condition. No condition can be imposed under law while granting bail in such a bailable offence.

12. The latter subjective satisfaction is not justiciable. The law of preventive detention has been described as jurisprudence of suspicion. From the past conduct of the detenu the detaining authority is to make inferences or assumptions about the possible future conduct. The detaining authority in the instant case had two specific data - of one conviction and one subsequent indictment, on the basis of a final report by the Investigating Officer. We are unable to accept the argument that they do not constitute valid or sufficient material to induce the requisite latter subjective satisfaction u/s 3(1).

13. No other contentions are raised. We are satisfied, in these circumstances, that this Writ Petition only deserves to be dismissed.

14. This Writ Petition is, in these circumstances, dismissed.