

(2006) 02 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition (HC) No. 104 of 2005

Smt. Chandrika

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Constitution of India, 1950 — Article 22 (5)
Karnataka Prevention of Dangerous Activities of Bootleggers Drug Offenders Gamblers
Goondas Immoral Traffic Offenders and Slum Grabbers Act, 1985 — Section 3 (1)
Penal Code, 1860 (IPC) — Section 376, 379

Citation : (2006) ILR (Kar) 1244 : (2006) 2 KarLJ 166 : (2006) 1 KCCR 64 SN

Hon'ble Judges : P. Vishwanatha Shetty, J;N. Kumar, J

Bench : Division Bench

Advocate : Kiran S. Javali, for the Appellant; H.S. Chandra Mouli, State Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner is the wife of Sri Manjunath alias Manju alias Ravi alias Santro Ravi alias Kiran alias Sidda Shetty S/o Sidda Shetty, the detenu herein. She is challenging in this writ petition, her husband's detention.

2. The detenu has been detained in Central Jail, Bangalore, in pursuance of an order of detention passed by the second respondent u/s 3(1) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (hereinafter referred to as "Goonda Act") as per Annexure-A. Annexure-B to the writ petition is the grounds of detention and Annexure-B1 is the list of documents on which the order of detention is passed. The said order has been approved by the first respondent as per Annexure-C, dated 13-7-2005. The said order was referred to the Advisory Board which recommended for its confirmation and accordingly the order of confirmation of the detenu for a period of 12 months was passed on 30-8-2005 which is produced as Annexure-D. These orders are impugned in this writ petition. After entertaining the writ petition, notice was ordered to the

respondents who have entered appearance through their Counsel and have filed detailed statement of objections.

3. We have heard the learned Counsels for both the parties.

4. Learned Counsel for the petitioner Sri Kiran S. Javali assailing the impugned order contends, that the grounds of detention does not reflect the satisfaction of the Detaining Authority notwithstanding the detenu being in judicial custody, there was a need to detain him. In the detention order several documents have been relied on and all the documents relied on are not furnished. Bail application and bail orders which are relied upon are not supplied to the detenu. If the documents which are not furnished to the detenu are not relied upon, the same would constitute extraneous material affecting the detention order. In fact, the detenu was acquitted in criminal case which was not placed before the authorities nor the authorities have considered the same which is a mandatory requirement. The representation made to the Advisory Board is not independently considered by the State Government before confirmation and therefore for the aforesaid reasons the impugned order is liable to be set aside. In support of his contention he has relied on a catena of judgments of the Supreme Court as well as this Court. Learned Special Public Prosecutor Sri Chandra Mouli, supported the order.

5. In the light of the material placed on record and the rival contentions, the question that arise for our consideration in this writ petition is, in the facts and circumstances of the case, whether the petitioner has made out a case for quashing the impugned order.

6. The material on record shows that the petitioner is involved in 12 criminal cases which are registered in various police stations in the City of Bangalore as well as Mysore. He is accused of offences under Sections 376 and 379 of the Indian Penal Code, 1860 and for offence under Suppression of Immoral Traffic in Women and Girls Act, 1956. In other words, he is accused of trafficking in young girls, rape and other heinous crimes. He has been arrested, detained and released on bail in several cases and in one case he is in judicial custody. While he is in judicial custody the detention order is passed u/s 3(1) of the Goonda Act. He has been served with the detention order and all the documents on the basis of which order was passed, are supplied to him. He made a representation to the State Government, which, after considering the said representation passed an order approving the detention and forwarded the same to the Advisory Board which after taking into consideration all the material before them and after hearing the detenu have advised the Government to confirm the said order. Thereafter the Government on consideration of the entire material, taking into consideration all relevant facts has passed the impugned order confirming the detention.

7. The law on the point is well-settled. A Constitution Bench of the Supreme Court in the case of Rameshwar Shaw Vs. District Magistrate, Burdwan and

Another, , has held whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released.

8. The Supreme Court in the case of Sunil Dutt Vs. Union of India (UOI) and Others, , has held that the documents and materials in support of the grounds on the basis of which the detention order has been made, the same being ex hypothesi in existence at the time of the issuance of the detention order and framing of the grounds, should be supplied to the detenu along with the grounds. Non-supply of such material and documents along with the grounds would clearly amount to a violation of the safeguard guaranteed under Article 22(5) of the Constitution. Those would, render the detention of the detenu illegal and void.

9. In Vijay Kumar Vs. State of Jammu and Kashmir and Others, , the Supreme Court held that the preventive detention is resorted to, to thwart future action. If the detenu is already in jail charged with a serious offence, he is thereby prevented from acting in a manner prejudicial to the security of the State. May be, in a given case there yet may be need to order preventive detention of a person already in jail; but in such a situation the detaining authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order need to be made.

10. In the case of Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another, , the Supreme Court held that the requisite subjective satisfaction of the detaining authority, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order.

11. Following the above principles, another Bench of three Judges of Supreme Court in N. Meera Rani Vs. Government of Tamil Nadu and Another, , held that subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc., ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention

order can be validly made even in anticipation to operate on his release.

12. The said judgment was followed, explained and referred to in various judgments by the Supreme Court. However, after reviewing the entire case-law, the Supreme Court in the case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, , as set down their conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingy referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

13. From the aforesaid catena of decisions it is now well-settled that the detention order can validly be passed even in the case of a person who is already in custody. In such situation it must appear that the authority was conscious of the fact that the detenu was already in custody. Further the grounds should disclose that there was enough material necessitating his detention. In the likelihood of his being released, he is likely to indulge in prejudicial activity is one such compelling necessity to pass the detention order. The antecedent history of past conduct, which is proximate in point of time has a rational connection with the conclusion to be drawn by the authority. If any application for bail is made by the detenu and the bail is refused or granted that is a matter which the detaining authority has to take note of. The detenu is entitled to the documents and materials in support of the grounds on the basis of which the detention order has been made, and non-supply of such material relied on by the detaining authority would clearly amount to violation of the safeguard guaranteed under Article 22(5) of the Constitution. If the document which is not relied upon by the detaining authority, but in respect of which a casual or passing reference is made, is not supplied to the detenu, it would in no way affect the detention order. In such circumstances, the detention order cannot be quashed on the ground that the authority has taken into consideration the documents or materials which are not relevant and extraneous. Once the detention order discloses the application of mind by the detaining authority, to the fact, that the detenu is in custody and that his preventive detention is necessary to prevent activities prejudicial to the maintenance of public order and the documents and material on which reliance is placed to come to such conclusion is furnished to the detenu and that he has been given an opportunity to make a representation against the order and that he has been heard in the matter and within the period stipulated under the Act all the procedures contemplated under the Act has been followed the detention order is unassailable.

14. In the instant case, a perusal of the detention order reveals that the detaining authority has taken note of the fact that the detenu was in judicial custody, in pursuance of the orders passed by the III Chief Judicial Magistrate in C.C. No. 14529 of 2005 which is pending trial. The authority has taken note of the fact that inspite of several cases being registered in different Police Stations in the city of Bangalore and Mysore, it is not possible to prevent his activities which are prejudicial to the maintenance of public order. Further, it is noticed that in some cases he has been released on bail, in some cases he is yet to be arrested, in some cases he is yet to appear before the Courts and because of the tactics adopted by him, cases are still pending without decision in various Courts. In spite of action being taken against him under Indian Penal Code and special enactments, it is not possible to prevent the detenu from carrying on his activities as immoral traffic offender, which had been adversely affecting the maintenance of public order. Because of the activities of the detenu, an atmosphere of fear is created in the minds of the public and witnesses are afraid of coming and deposing against him in the cases registered against him and

those who come to Court to give evidence are turning hostile and some are avoiding to come to Court to give evidence. Thus, he has been successful in preventing the prosecution of the cases launched against him legally. Therefore, in order to prevent the detenu from acting in any manner prejudicial to maintenance of public order it was found necessary to detain him.

15. It is not in dispute that all the documents on which reliance is placed have been supplied to the detenu. However, he has not been supplied with an application of bail filed by co-accused and the order releasing him. That in no way vitiates the detention order when the detaining authority has not relied on the said documents. While the said documents are not relied upon it cannot be said that the documents which are not relevant or extraneous are taken into consideration as contended by the petitioner. The detention order clearly discloses that the detenu has been released on bail in some cases which fact has been taken note of. Therefore, we do not find any substance in any of the contentions urged on behalf of the petitioner assailing the impugned order. It is to be noticed here that the allegations against the petitioner are very grave in nature and he is accused of trafficking in young girls, rape and other heinous crimes and twelve cases have been registered against him in the city of Bangalore as well as in Mysore. In spite of the same the detenu's activities are unhindered. While we make this observation we are fully conscious of the legal position, that if an order of detention is otherwise vitiated, merely because charges levelled against the detenu is of severe nature, it would not be a ground to uphold the order of detention. In the light of what is stated above, we do not find any illegality in the impugned order which calls for interference.

Accordingly, the writ petition is dismissed.

No costs.