

(1991) 04 MAD CK 0010
In the Madras High Court
Case No : Writ Petition No. 18013 of 1990

Subhash Babu

APPELLANT

Vs

State by the Secretary for Home, Prohibition and Excise
Department, Madras-9 and The District Magistrate and
District Collector, Erode, Periyar District

RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3

Citation : (1991) LW(Cri) 527

Hon'ble Judges : Thangamani, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; N. Dinakar, Additional
Public Prosecutor on behalf of the Respondent, for the Respondent

Judgement

K.M. Natarajan, J.—This writ petition is filed by one Subash Babu the friend of the detenu Vadivelu, under Article 226 of the Constitution

of India for the issuance of a writ of Habeas Corpus quashing the order of detention passed against the said Vadivelu dated 19.10.1990 and

setting him at liberty. The detenu come to the adverse notice as a habitual forest offender in view of the six cases referred to in the preamble to the

grounds of detention and he was detained on the basis of the ground case. The Collector and District Magistrate, Periyar District at Erode the

second Respondent herein in exercise of the powers conferred by Sub-section (1) of Section 3 of the Tamil Nadu prevention of Dangerous

Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act 1982 (Tamil Nadu Act

14 of 1982), hereinafter referred to the Act, read with O.C.Ko.Do. 949, Home, Prohibition and Excise Department dated 15.10.90 under Sub-

section (2) of Section 3 of the pain Act, passed the impugned order on 19.10.1990 against the detenu on reaching the requisite subjective

satisfaction on a consideration of the materials placed before him that it has become necessary to pass the detention order with a view to

preventing him from setting in any manner prejudicial to the maintenance of public order. The salient and material facts which necessitated the

detaining authority to pass the impugned order as set out in the grounds of detention are briefly as follows: On 30.9.1990. M. Nagarajan, Forest

Manager, Andhiyur Range, along with his subordinates proceeded to Chellampalayam beat for inspection as a special party. During the course of

the surveillance at about 12.10.P.M. they noticed two persons with head loads coming from the Res(Sic) forest at a distance of 5 chains. They

surrounded and stopped both of them who were found carrying on sandalwood billets illicitly cut from the Reserve forest. Of the two, the detenu

was one. The total weight of the sandal wood billets brought by the detenu was 42.5 Kg. worth Rs. 8,400/- while the sandalwood billets brought

by the other person, namely Palaniappan was 23.5. Kg. worth Rs. 4.600/-. They were seized, measured, numbered, weighed and entered in "H"

Form No. 07547 dated 30.9.90. Later, they were produced before the Judicial Magistrate, Bavani. On the basis of the said act. The impugned

order was passed on 19.10.90.

2. The impugned order was challenged on three grounds. (1) The second Respondent has no authority to pass an order of detention as delegation

of power u/s 3(2) of the Act is only to a limited period of three months. The State Government can delegate the power only in extraordinary

circumstances prevailing in an area u/s 3(2) of the Act and that the mere extension of delegation to all the District Magistrates without specific

circumstances is unconstitutional. Since the delegation to the second Respondent was mechanical and no specific circumstances was designed for

the delegation, the order is bad. (2) There was no compelling necessity to pass the order of detention and detain the detenu. The sponsoring

authority did not place the records relating to move of bail by the detenu which was dismissed. Since the bail (Sic) application was dismissed, there

was no possibility of the detenu coming out on bail while he was on remand. Since there was no compelling necessity to detain him, there was non-application of mind by the detaining authority and this vitiates the impugned order; and (3) The second Respondent has alleged from page 10 in Paragraph 3(i), (ii), (iii) and (vi) that the Government spends more money to curb the nefarious activities of the forest offenders, that the unlawful activities of the detenu are highly dangerous to ecological system, that he made the poor and innocent tribals anti-social and he misled them in illicit cutting of the trees and that because of his activities the bat population which survives by the edible succulent fruits of sandal is drastically reduced and increases the pest population. The second Respondent has taken 2 1/2 pages to explain the same in the grounds of detention. But the documents given to him along with the grounds of detention does not substantiate the same. The detenu was also given the affidavit of the Forest Manager, Anthiyur Range, which runs to two pages and it also does not mention about this, allegation. So in the circumstances, it is not known how the second Respondent arrived at the subjective satisfaction without any document and hence the order is bad. The extraneous consideration about the failure of ecological system and the drastic reduction of bat population violates Article 22(5) of the Constitution, as no documents were furnished to the detenu to make effective representation.

3. As regards the second contention, the Petitioner has taken it as ground No. (c) in his affidavit, wherein it is stated that the reason given in the ground was if he was not detained, he is likely to move bail and that there is the possibility of coming out on bail." The records relating to the filing of bail application by the detenu was not placed by the sponsoring authority before the second Respondent. Since his bail application was dismissed, there was no possibility of coming out on bail. There was no compelling necessity to detain him and this was due to non-application of mind by the detaining authority. The second Respondent in para 6 of the counter has stated that the sponsoring authority has not so far received notice on any bail application filed by the detenu and that if the detenu had filed bail application certainly the court would have ordered notice to the sponsoring authority and the same would have been served on him and as such no bail application has been filed by the detenu as stated. Hence

this contention fails. In the grounds of detention, it is stated in paras 4 and 5 that the detaining authority was aware that the detenu was in remand in the Sub Jail, Bhavani, that he would be proceeded with under the normal law, that he is likely to move for bail and that the possibility of his coming out on bail is imminent. As such, the detaining authority on the material mentioned above was satisfied that if the detenu comes out on bail and is let to remain at large, he will indulge in further activities prejudicial to the maintenance of public order and further recourse to normal law would not have the desired effect of preventing him from indulging in activities prejudicial to the maintenance of public order. Hence, the detaining authority considered that there was compelling necessity that pass the order. It is seen from the affidavit filed by the Petitioner that the second Respondent relied on six cases to substantiate that the detenu is the first offender that it was shown that the detenu was on bail in the first four cases and that in respect of the fifth case and the sixth case, it was shown that he was absconding. There is absolutely nothing to show that the detenu filed bail application and it was dismissed. Since the offence is under the Tamil Nadu Forest Act read with the Tamil Nadu Sandalwood Possession Rules, the possibility of his coming out on bail is not ruled out. In this connection, the learned Advocate General submitted that the mere fact that the detenu was remanded in respect of the ground case was not a ground that there was no compelling circumstances to pass an order of detention. He drew our attention to the latest decision reported in Smt. Azra Fatima Vs. Union of India (UOI) and Others, . That was a case where preventive detention was made u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988. It was contended in that case that the mere possibility of his release on bail was not enough for preventive detention. A mere possibility of release on bail and a bald statement that the detenu would repeat his criminal activities was also not sufficient to sustain the order of detention and the detaining authority did not apply its mind to this aspect of the matter that the detenu was already in custody, and his bail application having been rejected there was no possibility of his being released on bail in a serious offence under the Act, relying on the decisions of the Supreme Court in N. Meera Rani Vs. Government of Tamil Nadu and Another, . and Dharmendra Suganchand Chelawat and another Vs. Union of India and others, . Their

Lordships of the Supreme Court after discussing the earlier decisions held:

Thus, the material placed before the detaining authority and the facts mentioned in the grounds of detention clearly go to show that the detaining

authority was fully aware that the bail application filed by the detenu had been rejected by the Additional Chief Metropolitan Magistrate 8th Court,

Bombay. The detaining authority was also conscious of the fact that the two other detenus who were arrested and detained in the same raid had

already been released on bail. The detaining authority after taking into consideration the above materials placed before him, arrived at the

conclusion that the detenu being in Judicial custody may under the normal law of the land be granted bail and be in a position to continue to pursue

his nefarious activities. The detaining authority in these circumstances considered it necessary to invoke the law of preventive detention under the

Act to prevent the detenu from indulging in his prejudicial activities in future. In these circumstances, it cannot be said that the order of detention

was illegal on the ground that it was passed while the detenu was already in custody.

Applying the ratio in the said case to the facts of this case and considering the antecedents of the detenu, the detaining authority was satisfied that if

the detenu was released he will indulge in further activities prejudicial to the maintenance of public order, and as such, it cannot be said that there

are no compelling circumstances to pass orders against the detenu who was already in jail. Hence this contention fails.

4. As regards the third contention, the Petitioner raised it in ground Nos. (d) and (e). It is submitted by the Petitioner that in paras 3(i) (ii) (iii) and

(vi) of the grounds of detention the second Respondent alleged that the detenu spends money for nefarious activities that his unlawful activities are

highly dangerous to the ecological system, that he made poor and innocent tribals to anti-social elements, that because of his activities, the bat

population which survives by the suitable succulent fruits of second is drastically reduced and increases the pest population, that the second

Respondent has taken 2 1/2 pages to explain this is the grounds of detention and that the documents given to him along with the grounds of

detention do not substantiate the same. It is further stated that the detenu has also been served with the affidavit of the Forest Manager, Anthiyur,

and it also does not mentioned those allegations. It is stated that in such circumstances, it is not known how the second Respondent arrived at the subjective satisfaction without any document. The extraneous consideration about the failure of the ecological system and the drastic reduction of bat population violates Article 22(5) of the Constitution as no document has been given to the detenu to make effective representation. In paras 7 and 8 of the counter it is specifically stated that the impact of ruthless cutting and removal of sandalwood trees and the effect of the ecological systems and how it affects the public order was elaborately discussed in the grounds of detention. But, no documentary evidence could be given on this. Engaging of tribals for cutting and removal Sandalwood trees by the detenu was admitted by the detenu himself in his statement dated 30.9.90 and hence the nefarious activities were proved. Further, the failure of ecological system and the drastic reduction of bat population and increase of pest population could not be supported by documentary evidence and that it is only knowledge and experience.

5. In this connection, the learned Counsel for the Petitioner drew the attention of this Court to the grounds of detention and also relied on a decision of the Supreme Court. In *Vashisht Narain Karwaria v. State of U.P. and Anr.* 1990 (2) Cri 115 the detention order under the National Security Act was quashed on the ground that where the sponsoring authority had placed certain irrelevant and extraneous matters before the detaining authority which should have influenced the mind of detaining authority in passing the detention order the same is liable to be quashed. It was contended in that case on behalf of the Appellant that the sponsoring authority had placed certain irrelevant and extraneous matter before the detaining authority which should have influenced the mind of the detaining authority and stealthily crept into the decision of the said authority directing detention of the detenu and as such the impugned order is liable to be quashed. Out of the four documents referred to in the detention order, in one of the documents, namely, in the confidential letter dated 31st March, 1988 sent by the Senior Superintendent of Police, Allahabad to the detaining authority. It is stated as follows:

It is stated that the accused is a hardened criminal and has a gang. Such persons are committing heinous crimes often which adversely affects the

public order. There are many cases against accused Vashisht Narain registered in various police stations. It has become his habit to commit

offences. Hence I recommend that an order for atleast 12 months detention be passed against Shri Vashisht Narain Karwaria alias Bhukkhal son

of late Shri Jagat Narain Karwaria, the aforesaid accused order mention 3(2) of the above mentioned Act.

In another letter submitted by the station house officer to the Senior Superintendent of Police it is also stated as follows:

It is submitted that Shri Vashisht Narain Karwaria alias Bhyukkal, the aforesaid accused is a hardened criminal and has a gang. In his gang his son

Kapil and two other big offenders Ram Chandra Tripathi and Santosh Kumar Tripathi son of Gaya prasad, resident of Ganspur, P.S. cormufti

District, Allahabad are included. These people often used to commit crimes, by which terror and fear prevail in the people, Many crimes are

registered against Vashisht Narain Karwaria in many police stations.

In Paras 9 to 11, their Lordships considered the question and held as follows:

9. The above averments made in the above two letters, the copies of which are furnished to the detenu along with grounds of detention

unequivocally and clearly spell out that the detenu is a hardened criminal, having a gang under his control often committing heinous crimes, that

many cases against the detenu are registered in various police stations and that he is in the habit of committing offences. No doubt, these averments

are not made mention of in the grounds of detention. But can it be said that these materials placed before the authority might not have influenced

the mind of the detaining authority in taking the decision of detaining the detenu? In our view, the above averments which are extraneous touching

the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority to some

extent one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. As rightly pointed out

by Mr. Jain, had these extraneous material not been placed before the detaining authority, he might or might not have passed this order.

Therefore, we have to hold that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the

order. There are several pronouncements of this Court, on this point, of which we

will make mention of to the following decisions:

Ram Krishna Paul Vs. The Government of West Bengal and Others, , Smt. Pushpa Vs. Union of India (UOI) and Others, Merugu Satyanarayana

Vs. State of Andhra Pradesh and Others, Mehboob Khan Nawab Khan Pathan Vs. Police Commissioner, Ahmedabad and Another,

10. Mr. Balveer Bhandari relying on Section 5A of the Act urged that the order of detention should not be deemed to be invalid or inoperative

merely on the ground that some extraneous materials were placed before the detaining authority since those alleged extraneous materials have no

bearing on the validity of this impugned order which can be sustained on the material set out in the grounds of detention itself. Placing reliance on

decision of this Court in Prakash Chandra Mehta v. Commissioner and Secretary Government of Kerala and Ors. 1985 (Suppl) S.C.C. 144

wherein it has been observed that the "grounds" under Article 22(5) of the Constitution do not mean more factual inference but mean factual

inferences plus factual material submitted that in the present case the factual material set out in the grounds of detention alone led to the passing of

the order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. We are unable to see any

force in the above submission. What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu,

each activity is a separate ground by itself and if one of the grounds is vague, non-existent, not relevant, not connected or not proximately

connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention.

11. It is not the case that this impugned order has been made on two or more grounds covering various activities of the detenu, but on the other

hand the order has been passed in the sole ground relatable to a single incident. The conclusion arrived at by us is only on the basis that the

aforesaid extraneous materials placed before the detaining authority might have influenced the mind of the detaining authority, but not on the ground

that one of the grounds of the detention order has become invalid or inoperative for the reason mentioned in Section 5(A)(a).

Consequently the Supreme Court allowed the writ appeal in that case. In the instant case, as rightly contended by the learned Counsel for the

Petitioner, in para 3(ii) and (iii) (vi) it is stated as follows:

3(ii) In fact, the unlawful activities of the said Thiru Vadivel are highly dangerous to the ecological system and thereby to the public order because

innocent tribals are misled by him by way of offering money for helping him in illicit cutting and removal of sandalwood trees from the reserve

forest, which ultimately result in the loss of trees in the forest causing wide-spread danger to the ecological systems and thereby causing a huge loss

to the Government. The fast money in the hands of poor tribals make them susceptible to resort to drinking and gambling Thus by resorting to all

these methods, he made poor and innocent tribals anti-social. A sense of social insecurity is transmitted by him to the Society. Their special order

and moral values are disrupted by the activities of Thiru Vadivel and in his own statement he was told that he is carrying on with the said unlawful

activities continuously. By and large, he is a confirmed, threat to the ecological system and society, if he is allowed to remain at large.

3(iii) In the light of the well established Forest offences narrated above, it is obvious that the activities of Thiru Vadivel who is indulging in such a

manner is dangerous to persons, public property and the ecological system. causing great loss to Government and thus adversely affect the

maintenance of public order.

3(vi) In fact he is involved in sandalwood smuggling by himself and by employing tribals as coolies and he has been preparing for committing more

offences, and causing grave and widespread danger to the ecological system and thereby affecting the maintenance of public order contemplated in

Section 2(a) and the Explanation appended to it under the Tamil Nadu Prevention of Dangerous Activities Act, 1982 (Tamil Nadu Act 14 of 1982

as amended by Act 1 of 1988).

Admittedly no documents were placed before the detaining authority in support of these allegations. It is clearly spelt out from the allegations that

the detenu is described as a confirmed threat to the ecological system and society and further he is involved in sandalwood smuggling by himself

and by employing tribals as coolies and he has been preparing for committing more offences and causing grave and wide-spread danger to the

ecological system. Even in the counter, it has not been stated as to how the allegations were made against the detenu. The authorities cannot

escape by saying that it can be inferred and that it is common knowledge and that it can be known only through practical knowledge and

experience. As rightly contended by the learned Counsel for the Petitioner at least in the affidavit filed by the Forest Ranger, he could have stated

all these things and necessary documents could have been produced. In our view, the above averments are extraneous touching the character of

the detenu and it might have influenced the mind of the detaining authority to some extent one way or other in reaching the subjective satisfaction to

take the decision of directing the detention of the detenu. Hence, we are of the view that the detention order is suffering from the vice of

consideration of extraneous materials vitiating the validity of the order as held by the Supreme Court.

7. This cannot be got over by invoking Section 5A of the Act on the ground that the impugned order can be sustained on other grounds. As held in

the above quoted Supreme Court decision, what Section 5A provides is that where there are two or more grounds covering various activities of

the detenu, each activity is a separate ground by itself and if one of the grounds is vague, non-existent, not relevant, not connected or not

proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention. But in the

instant case, the impugned order has been passed on the basis of the ground case alone which relates to a single incident and which formed a single

ground and as such, once if it is found that it is only on the basis of the aforesaid extraneous material placed before the detaining authority, which

might have influenced the mind of the detaining authority to some extent one way or other, the order was passed, certainly it becomes invalid and

resort u/s 5A cannot be made.

8. Further, there is every justification in the submission of the learned Counsel for the Petitioner that the detenu had been deprived of making

effective and purposeful representation under Article 22(5) of the Constitution of India, since no particulars or details were given in regard to the

involvement of the detenu in the sandalwood smuggling in many cases and in regard to the allegation that he was involved in smuggling by himself

and by employing tribals as coolies and he has been preparing for committing more offences and causing grave and wide-spread danger to the

ecological system and thereby causing loss to the Government by his activities. No details are given in regard to the allegation that he made poor

and innocent tribals as anti-social. Further, no details are given to prove the allegation that a sense of social insecurity is transmitted by him to the

society. Even in the counter, no details have been given in respect of the contentions raised in the affidavit and in the grounds challenging the order of detention.

9. Hence we hold that the impugned order is vitiated in view of our finding on this contention. The learned Counsel for the Petitioner reserves his

right to raise the first contention in some other appropriate proceedings and he does not want this Court to give any finding on this contention in this

case. Accordingly, we refrain from giving any finding on the first submission.

10. Thus, for the foregoing reasons, without going into the merits of other contentions, we allow the writ petition, quash the order of detention

passed against the detenu and direct him to be set at liberty forthwith unless he is required in connection with some other case.