

(2004) 09 MAD CK 0046
In the Madras High Court
Case No : H.C.P. No. 484 of 2004

Suman Devar

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 09 MAD CK 0046

Hon'ble Judges : P.K. Misra, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; Abudukumar Rajarathinam, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

P.K. Mishra, J.—This Habeas Corpus petition has been filed by the detenu himself, who has been detained under 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 as the Act, by order dated 18.2.2004, passed by Respondent No.2.

2. The grounds of detention is based on the incident dated 24.1.2004 and the two adverse cases noticed by the detaining authority had occurred

on 11.9.2001 and 29.3.2003. In the first adverse case dated 11.9.2001, the allegation is that the detenu and his 5 associates formed an unlawful

assembly with a common object of damaging a bus and in furtherance of their common object, they damaged the front and rear wind screen

glasses, side glasses, head light with casuarina sticks and thereby caused damages to the tune of Rs.20,950/- and they also assaulted the

witness and caused injuries. On the basis of the aforesaid allegation, a case has been registered in Manalmedu P.S Cr.No.453/2001 under

Sections, 147, 323 IPC and 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. In the second adverse case dated

29.3.2003, the allegation is that the detenu and his 3 associates attacked one Dhanasekaran with veecharuval due to previous enmity and caused

the death in pursuance of their common intention. A case has been registered in Cr.No.178/2003 under Sections 449, 302 r/w. 34 IPC. In the

ground case dated 24.1.2004, it is alleged that the detenu and his 3 associates criminally intimidated the public and vendors demanding mamool by

threatening that they were already involved in the cases like murder and robbery and that in order to conduct such cases and other expenses

they should part with money and they subsequently threatened the persons with weapons like vicharuval and country made bombs. It is further

alleged that Then one of his associate Thiru. Subash forcibly robbed Rs.150/- from the pocket of the complainant and another associate Thiru.

Padaleeswaran forcibly robbed Rs.200/- from Thiru. Chandrasekaran. All the accused persons also chased the witnesses and threatened them. A

case has been registered under Sections 392, 507(ii) r/w. 397 IPC and 27(1) Arms Act of 1959, 9(b)(1) Explosives Act, 1884 and 4(1), 5 of

Explosive Substances Act, 1908. Incidentally it may be pointed out that three associates of the present petitioner were also detained under

preventive detention by separate orders passed by the very same Collector on the very same day and out of the other three, as per the advice of

the Advisory Board, the detenues Javankumar and Padaleeswaran have been released.

3. In the aforesaid background, learned counsel for the petitioner has contended as follows :-

(1) As per the provisions contained in Section 3(2) of the Act, the District Magistrate and the Collector of Cuddalore District is only authorised to

pass orders of preventive detention in respect of the incidents which occur within such district and in the present case, the first two incidents relied

upon by the Collector had occurred in a different district, and therefore, the Collector did not have the territorial jurisdiction to pass the order of

preventive detention.

(2) The incidents relied upon by the District Collector are solitary incidents and that too after a long gap and the detenu could not have been

considered as a Goonda as defined under the Act, and therefore, the order of detention is vitiated by non-application of mind.

(3) Three other accused persons involved in the ground were also detained under preventive detention by the very same Collector by separate

orders passed on the very same day, and as per the advice of the Board, two of the persons had been released, and since the allegation against

those two other persons were either equally serious or more serious and those other persons past record was even worse as that of the present

detenu and yet they were released, the State Government should have considered those aspects at the time of confirmation of the detention order

and without application of mind, the State Government has mechanically confirmed the order.

4. Learned counsel appearing for the State has supported the order of detention and contended that the contentions raised by the petitioner are not tenable.

5. In connection with the first contention, the learned counsel for the petitioner has submitted that u/s 3(1) power is conferred on the State

Government to pass the order of preventive detention and relied upon Section 3(2) of the Act, which is being relevant, is extracted hereunder :-

“3(2) If, having regard to the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of a District

Magistrate or a Commissioner of Police, the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that

during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-

section (1), exercise the powers conferred by the said sub-section.”

6. Learned counsel by relying upon Section 3(2) has further submitted that u/s 3(2), such power can also be conferred on a District Magistrate or

a Commissioner of Police relating to any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, and

therefore, the District Magistrate or the Commissioner of Police authorised u/s 3(2) cannot pass any order of preventive detention relating to a

person, who had committed the crimes relied upon by such authority beyond the

territorial jurisdiction of such authority.

7. On a careful consideration of the aforesaid submission, we do not think that the contention raised by the learned counsel for the petitioner can

be accepted. While we accept the contention that there should be territorial nexus in the matter relating to preventive detention passed by

the District Magistrate or the Commissioner of Police of a particular district or area concerned, it cannot be said that all the incidents on the

basis of which the order is passed must have occurred within the territorial jurisdiction of the concerned detaining authority. Of course, it cannot be

denied that there should be some territorial nexus, but such nexus cannot be confined to the narrow limits suggested by the learned counsel for the

petitioner.

To illustrate the point, supposing the detenu is a resident of a different district and has committed all the alleged crimes in the districts other than the

one under the territorial jurisdiction of the concerned authority, obviously, the Collector of such district is not authorised to pass an order of

preventive detention, because none of the cause of action arose within the jurisdiction of such Collector. On the other hand, however, if such a

person, who is a resident of some other district and has committed crimes in other districts, comes within the territorial jurisdiction of a particular

jurisdiction of a district Collector, such Collector, if he is satisfied on the basis of the incidents in respect of other districts, can pass an order of

preventive detention. Similarly, if the ground case has occurred within the jurisdiction of a particular district, as in this case, even though adverse

incidents had occurred beyond the jurisdiction, the Collector is not powerless to pass an order of preventive detention. What is required is that

there should be some reasonable nexus with the territorial jurisdiction of the concerned authority and depending upon the facts and circumstances

of a particular case, the order of preventive detention can be passed.

8. It is to be noticed that as per Section 3(1), an order of preventive detention can be passed with a view to prevent him from acting in any

manner prejudicial to the maintenance of public order. It is obvious that so far as the State is concerned, such order is with a view to prevent

such a person from acting in any manner without prejudicial to the maintenance of public order within the entire State, whereas if such power is

exercised u/s 3(2) by the District Collector or the Commissioner of Police, such order must be with a view to prevent the person from acting in any manner without prejudicial to the maintenance of public order within the territory of such Collector or the Commissioner. Therefore, to this incident, there should be some nexus. Such nexus can arise if the person has committed crime/crimes within the area concerned or if such person has committed crimes outside the area, but has come within the concerned area, because even in such a case, there may be apprehension that such person can act in any manner prejudicial to the maintenance of public order in the concerned district. Judged against the aforesaid principle, we are unable to accept the contention raised by the petitioner.

9. To appreciate the second contention raised by the petitioner, it is necessary to notice some of the relevant provisions.

As per Section 2(f) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act XIV of 1860).

As per Section 3(1) read with 3(2), the order of preventive detention can be passed by the District Magistrate in respect of "Goonda" with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The expression "habitually commits" has not been defined in the Act.

10. In 1995 SCC 454 (MUSTAKMIYA JABBARMIA SHAIKH v. M.M. MEHTA, COMMISSIONER OF POLICE AND OTHERS), while construing similar provision under the Gujarat Prevention of Anti-Social Activities Act, the Supreme Court has considered the meaning of such expression and has observed as follows:-

8. The Act has defined "dangerous person" in clause (c) of Section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression "habitually" or "habitual" has however, not been defined under the Act. According to The Law Lexicon by P.

Ramanatha Aiyar, Reprint Edn. (1987), p.499, "habitually"

means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously

convicted of a crime to the sentences and committed to prison more than twice. The word "habitually" means "usually" and

generally. Almost similar meaning is assigned to the words "habit" in Aiyar's Judicial Dictionary, 10th Edn., p.485. It does not refer

to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the

complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a dangerous

person unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual

criminal. In Gopalanachari V. State of Kerala 1981 SCC 546 this Court had an occasion to deal with expressions like "bad habit",

"habitual", "desperate", "dangerous", and "hazardous". This Court observed that the word habit implies frequent and usual

practice. Again in Vijay Narain Singh v. State of Bihar 1984 SCC 361 this Court construed the expression "habitually" to mean repeatedly or

persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts

and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a

person within the expression "dangerous person" as defined in clause(c) of Section 2 of the Act, there should be positive material to indicate

that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI

or Chapter XVII of IPC or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of IPC

or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act."

In the aforesaid decision, it was further observed :

10. . . . From the narration of facts in the said complaint it is abundantly clear that the criminal activity was directed against an individual and

from the nature of the incident it is difficult to assume that it gave rise to public

order disturbing the tranquillity of the locality. At the most it was a criminal act directed only against an individual which has nothing to do with the question of public order. It appears that it was on account of the earlier day incident that the petitioner made a plan along with his associates to teach a lesson to the complainant by assaulting him when he was seen in Hair Cutting Saloon on 24-4-1993. This apart the incident had occurred on 24-4-1993 while the detention order was passed on 19-8-1994 after the lapse of more than 16 months. This long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of detention.

The aforesaid decision of the Supreme Court has taken note of the earlier decisions in respect of similar provisions and it is not necessary to refer to those earlier decisions specifically.

11. From the aforesaid decision, it is apparent that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a dangerous person in our case, a Goonda. Moreover, it must be established that there is thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and repeated, persistent and similar acts are necessary to justify an inference of habit.

12. As per the specific definition contained in Section 2(f), habitual commission of offences must be in respect of the offences punishable in

Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code. In other words, habitual commission of offences coming under other

Chapters would not make the person goonda within the meaning of Section 2(f), even though such a person can be described as a

habitual criminal. Even if a person habitually commits crime, such a person cannot be considered as goonda within the meaning of

Section 2(f), unless, the habitual commission of offences included in the Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code.

Moreover, there should be thread of continuity stringing together similar

repetitive acts but not isolated, individual and dissimilar acts½.

Judged against the aforesaid light, it is apparent that the order of detention has been passed without application of mind to the requirement envisaged under the Act.

13. In the grounds of detention, after narrating two adverse cases and the ground case, the detaining authority has concluded in paragraph 4 that

½Hence I am satisfied that Thiru. Suman is habitually committing crimes and is also acting in a manner prejudicial to the maintenance of public

order and as such he is a Goonda as contemplated under sec. 2(f) of the Tamil Nadu Act 14/1982½.

14. Out of the incidents already narrated, the first incident had allegedly occurred on 11.9.2001, about 2½ years prior to the order of preventive

detention. Applying the standard laid down in the Supreme Court decision already cited, such incident was obviously a stale incident. Moreover,

gravamen of the allegation in the said incident was that the detenu and his 5 associates had formed an unlawful assembly with the common object

of damaging a bus and in furtherance of their common intention, they had damaged the bus. On the basis of the said allegation, a case was

registered u/s 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act. Thus, the primary allegation was not the commission of an

offence under Chapter XVI, XVII and XXII of IPC. It is of course true that a case was also registered u/s 323 IPC, but as narrated by the

detaining authority himself, the main allegation was relating to commission of offence under the Tamil Nadu Property (Prevention of Damage and

Loss) Act. Not only the incident was very stale, but also possibly the incident would not come within the definition as envisaged.

15. In respect of the second incident, even though an offence u/s 302 IPC had been allegedly committed, from the narration of the events in the

grounds of detention as well as the materials contained in the booklet furnished to the detenu, it is apparent that such action took place as the

present detenu and his father and others wanted to seek revenge against a person who had murdered the grandfather of the present detenu. The

obvious motive was, therefore, seeking of private revenge against a particular individual and it had got no nexus with the question of maintenance of

public order. Commission of such offence can be said to be an isolated act and

not commission of a similar act as compared to the ground incident, namely, the commission of offence under Sections 392 and 398 IPC with the Explosives Act and the Explosive Substances Act in a public place. Keeping in view the dictum of the Supreme Court in the aforesaid case, we are of the opinion that on the basis of unrelated incidents which had occurred in 2001 and 2003, there was no material to come to a conclusion that the detenu was a goonda within the meaning of Section 2(f) as per the ground incident dated 24.1.2004. On the basis of the aforesaid conclusion, the detenu is entitled to be released.

16. The last contention raised by the counsel for the petitioner also merits acceptance in the peculiar facts and circumstances of the present case.

As already noticed, in the present case, four persons were involved in the ground incident. Out of four persons, two persons, namely Javankumar and Padaleeswaran have been released by the State Government on the basis of the opinion furnished by the Advisory Board. The contention of the learned counsel is to the effect that in respect of those detenues, who were detained on the basis of the very same ground incident, the allegation relating to past history were equal or even more serious and the fact that those persons had been released was a relevant circumstance which should have been considered by the State Government at the time of confirmation of the order of detention.

17. From the materials on record produced before us, it is apparent that at least so far as Padaleeswaran is concerned, the allegations against him in the ground case as well as the adverse cases relating to him were much more serious than that of the present detenu. It is of course true that we are not sitting to review the advice rendered by the Advisory Board. However, the mere fact that the Advisory Board had advised for release of those two persons and particularly, Padaleeswaran was a relevant circumstance to be considered by the State Government at the time of confirmation of the order in respect of the present detenu as the ground case relating to the present detenu and the aforesaid Padaleeswaran were the same.

18. Learned counsel appearing for the respondents has submitted that as per the provisions contained in Section 12(2) of the Act, in view of the opinion of the Advisory Board that there was no sufficient cause for the detention

of the person concerned, namely Padaleeswaran, the State

Government was bound to revoke such detention and the fact that such other person was released by the State Government, being bound by the

opinion of the Advisory Board, is not a relevant circumstance.

19. In 1983 SCC 509 (MOHD. SHAKEEL WAHID AHMED v. STATE OF MAHARASHTRA AND OTHERS), relied upon by the learned

counsel for the petitioner, the fact that the order of preventive detention of a person on the basis of selfsame incident had been revoked on the

basis of the report of the Advisory Board was not brought to the notice of the detaining authority, was considered to have vitiated the order of

preventive detention. The only difference in the said case and the present case is that in the said case, the opinion and the consequent order of

release were not brought to the notice of the detaining authority, whereas in the present case, such opinion and the consequent release of the

detenues, who had been detained on the basis of the very same ground case, was not brought to the notice of the State Government while it was

considering the question of confirmation of the order of detention. In our opinion, this itself in the facts situation does not make a difference in the

matter.

20. As per Section 12(1), even if the Advisory Board gives a opinion that there is sufficient cause for detention of a person, the State Government

is not bound to confirm the order of detention, but the State Government may confirm the detention order. In other words, even though as

per Section 12(2) the opinion of the Advisory Board that there is no sufficient cause for the detention is binding and the State Government is bound

to revoke the detention in such case, the opinion of the Advisory Board that there is sufficient cause for detention is not binding on the State

Government and inspite of such opinion regarding sufficiency for the cause of the detention, the State Government may revoke such detention. It is

obvious that while considering the question of confirmation of the order of detention u/s 12(1), the State Government is required to apply its mind

to all relevant circumstances. The fact that the Advisory Board had given a particular opinion for releasing a detenue, who had been

detained on the very same ground case, is obviously a relevant circumstance to be considered by the State Government and the ratio of the

decision of the Supreme Court is equally applicable.

21. Learned counsel for the respondents by relying upon the decision of the Supreme Court in 2000(2) L.W 1300 (RAJAPPA

NEELAKANTAN v. STATE OF TAMIL NADU AND OTHERS) has submitted that the release of another detenu of similar allegation is not a relevant factor.

22. On carefully going through the aforesaid decision, we feel that the said decision in which there is no reference made to earlier decision of the

Supreme Court is applicable to the facts and circumstances of the present case. In the latter decision of the Supreme Court, there were two

separate orders of preventive detention on two different dates under COFEPOSA in respect of two separate individuals and the only connecting

link is both the individuals were travelling in the same car on the date of incident, but there was no allegation that both of them had committed the

offence jointly. In those circumstances, the Supreme Court observed that the release of other person was not a relevant circumstance for the

consideration of the detaining authority. In our opinion, the facts of the present case are rather similar to the earlier decision of the Supreme Court.

23. Learned counsel for the State has also submitted that if such submission is accepted, the State Government would be required to consider and

apply opinion of the Advisory Board in respect of all the detenues involved in different cases. We do not think that the State Government is

required to consider the factum of release of all the detenues detained in different cases. Where, however, the ground case is the same in respect of

several detenues, how the case of a codetenu is considered subsequently by the Advisory Board or even the Court, is a relevant circumstance,

which the State Government is required to consider at the subsequent stage of confirmation. This is not to suggest that in every case where the

Advisory Board opines regarding the release of a codetenu detained on the basis of the same ground case, all the codetenues are to be released

irrespective of other circumstances. We are stressing upon the fact that such a release is a relevant factor, which should be considered by the State

Government and non-consideration of such relevant factor would vitiate the order of confirmation.

24. In the result, the HCP is allowed and the detenu is set at liberty forthwith

unless he is required in any other connected case.