

(2006) 04 MAD CK 0115

In the Madras High Court

Case No : Habeas Corpus Petition No. 144 of 2006

T. Malathi

APPELLANT

Vs

The District Magistrate and District Collector and The
Secretary to Government Prohibition and Excise Department

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 341
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2, 3(1)

Citation : (2006) 04 MAD CK 0115

Hon'ble Judges : P. Sathasivam, J; J.A.K. Sampathkumar, J

Bench : Division Bench

**Advocate : R. Srinivas, for the Appellant; Abudukumar Rajaratrinam,
Government Advocate (Crl.), for the Respondent**

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner, by name, T. Malathi challenges the impugned order of detention dated 13.01.2006, detaining one

Arumugam, as ""Goonda"" u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,

Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short ""Tamil Nadu Act 14 of 1982"").

2. In order to understand the claim of the petitioner, it is useful to refer the following details stated in the Grounds of Detention:

(a) The detenu Arumugam, Son of Amirthalingam is the brother of Manikandan alias ""Dadha"" Manikandan of Kulapalayam village, Vanur Taluk,

Villupuram District. In Kulapalayam village, two factions, one headed by ""Dhadha"" Manikandan and another by Boopalan, were functioning

mostly engaging themselves in ""Katta Panchayats"" and violent activities like committing murder for wage. Enmity developed between the two

factions due to their profession. While so, Tamilselva Ganapathi belonging to Manikandan alias ""Dadha"" Manikandan faction was murdered by

Boopalan faction, and Venkat alias Vedhanayagam was cited as an accused in that case. The case ended in acquittal after trial. Enraged by the

acquittal, Arumugam brother of Manikandan alias ""Dadha"" Manikandan, and his associates with the common object of committing murder of

Venkat alias Vedhanayagam formed themselves into an unlawful assembly armed with Veecharival, on 25.10.2005 at about 5.00 p.m., went in a

Tata Sumo car bearing registration No. TN-28-C-3697 to Periyamudaliar Chavadi, Diwan Kandappa Nagar on Periyamudaliar ChavadiAuroville

Road and wrongfully restrained Venkat @ Vedhanayagam in front of Arunagiri workshop while he was riding on his Hero Honda Motor Cycle

PY-01-T-1000 and on seeing Arumugam and his associates, Venkat alias Vedhanayagam abandoned his motor cycle and started running through

the vacant site belonging to one Somasekaran and Arumugam cut Venktat on his head with the veecharival; the associates of Arumugam cut

Venkat on his face and neck and caused his instantan eous death. On seeing this cruel incident, Elumalai and Raja fled the scene. The nearby shop

owners and STD booth owners have closed their shops. A feeling of insecurity prevailed in that area. Normal life activities came to a stand still. On

the complaint of Muthuvel, father of deceased Venkat alias Vedhanayagam, a case was registered in Cr. No. 644/2005 of Kottakuppam Police

Station u/s 147, 148, 341 and 302 IPC.

(b) It is further seen that the said Arumugam surrendered before the Judicial Magistrate, Thirukoilur on 27.10.2005 and the learned Judicial

Magistrate, remanded him to custody till 10.11.2005. He was taken to police custody on 31.10.2005 and during interrogation, on 04.11 .2005 he

voluntarily confessed about the role played by him in the commission of offence. On the basis of his confession statement, case property was

seized. The offences charged under Sections 147, 148, 341 & 302 IPC relate to assault and act endangering to human life and the personal safety

of others and criminal intimidation of causing death and as such punishable under Chapter XVI of Indian Penal Code.

(c) The Detaining Authority, after satisfying himself that the said Arumugam is habitually committing crimes and also acting in a manner prejudicial

to the maintenance of Public Order and as such he is a "" GOONDA"" as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982, passed the

impugned Detention Order. He also concluded that by committing the above described grave crime in the public, the detenu has created alarm and

feeling of insecurity in the minds of the public residing in the area and thereby acted in a manner prejudicial to the maintenance of Public Order.

3. Heard Mr. R. Srinivas, learned Counsel for the petitioner and Mr. Abudukumar Rajarathinam, learned Government Advocate (Crl.side) for the respondents.

4. At the foremost, learned Counsel for the petitioner contended that in the absence of valid order by the learned Judicial Magistrate extending the

remand of the detenu, reference made in para-4 of the Grounds of Detention as if his remand was extended by order of the Magistrate is factually

incorrect, which amply shows the non-application of mind on the part of the Detaining Authority, which vitiates the impugned detention order

passed by him.

5. While elaborating the said contention, learned Counsel has brought to our notice Page 82 of the paper book supplied to the detenu, which

shows that on 07.11.2005 the accused was produced before District Munsif-cum-Judicial Magistrate, Vanur and the learned Magistrate

remanded him to judicial custody till 17.11.2005. On 17.11.2005, the accused was produced and his remand was extended till 01.12.2005. On

01.12.2005, since the accused was not produced, the learned Magistrate directed for the production of the accused on 15.12.2005. On 15.12

.2005 also the accused was not produced and again a direction was issued by the Magistrate for production of the detenu on 29.12.2005. On

29.12.2005, the accused was produced and remand was extended till 12.01.2006. On 12.01.2006, since the accused was not produced, the

learned Magistrate, directed for the production of the accused on 25.01 .2006. According to the learned Counsel for the petitioner, except 0

7.11.2005 and 29.12.2005, on all other occasions the accused was not produced and the learned Magistrate did not extend the remand and in

such circumstances, the Detaining Authority is not justified in stating that ""his

remand was ordered to be extended"" and it exposes nonapplication of mind on the part of the Detaining Authority. He also submitted that the detaining authority referred incorrect statements in the Grounds of Detention

and on both the grounds, the impugned Detention Order is liable to be quashed. In this regard, he relied on the Full Bench decision of this Court in

Hidaya Banu v. State of Tamil Nadu reported in 2002 MLJ (Crl.) 608 and two Division Bench decisions of this Court, viz., (i) Abdul Alim v. State

of Tamil Nadu 2003 (1) CTC 673; and (ii) Mohamed Sathali Premnasir v. State of Tamil Nadu 2006 (1) LW (Crl.) 155.

6. On the other hand, learned Government Advocate pointed out that though the accused was not produced on 17.11.2005 and 15.12.2005 as

well as on 12.01.2006, by valid order dated 07.11.2005, the accused was remanded to custody and the same was extended and in fact, the

accused was produced on 29.12.2005 and the learned Judicial Magistrate, Vanur extended his remand till 12.01.2006. No doubt, on

12.01.2006, the accused was not produced, however, the learned Magistrate directed for the production of the accused on 25.01.2006. The

same has been correctly stated in para 4 of the Grounds of Detention. He also contended that the decisions relied on by the learned Counsel for

the petitioner are not applicable to the case on hand.

7. In 2002 MLJ (Crl.) 608 (cited supra), as rightly pointed out by the learned Government Advocate, though the detenu therein was taking

treatment as an inpatient in the Government Hospital, Royapettah, Chennai the Detaining Authority has mechanically described the detenu to be a

remand prisoner and lodged in Central Prison. In those circumstances, after finding that the detenu was factually and admittedly not in Jail on the

day when the detention order was passed, the Full Bench of this Court quashed the detention order.

8. In the decisions relied on by the learned Counsel for the petitioner in 2003 (1) CTC 673 and 2006 (1) LW (Crl.) 155 (both cited supra), there

is no material to show that the remand was extended by an order of learned Magistrate. On going through the factual details in all the three cases,

we are satisfied that these cases are not applicable to the case on hand. As rightly pointed out by the learned Government Advocate and also it is

not in dispute that when the accused was produced on 07.11.2005, learned

Judicial Magistrate, Vanur remanded him to judicial custody till

17.11.2005 and thereafter, on 17.11.2005, the accused was produced and the learned Magistrate extended the remand till 01.12.2005. No

doubt, on the next two dates, i. e., 01.12.2005 and 15.12.2005, the accused was not produced before the Magistrate, however, on 29.12.2005,

he was produced and remand was extended till 12.01.2006. It is not the case of the petitioner that after 01.12.2005 the detenu was not in

custody. On the other hand, he was produced before the Magistrate on 29.12.2005 and his remand was extended till 12.01.2006. It is true that

on 12.01.2006, the accused was not produced and the learned Magistrate directed for his production on 25.01.2006. This aspect, as pointed out

by the learned Government Advocate has been correctly stated in para 4 of the grounds of detention.

9. He also relied on the Division Bench decision of this Court dated 27.10.2003 made in HCP. No. 453 of 2003 Thomaiya Rajan @ Rajan v. The

Commissioner of Police, Greater Chennai, Chennai wherein in an identical situation, this Court rejected similar stand taken by the petitioner therein.

The following discussion and conclusion in para 3 of the said judgment is relevant.

3. As against this, the Learned Additional Public Prosecutor points out that though the accused was not produced on 15.11.2002, the Magistrate

himself directed the detenu to be produced on 29.11.2002. Learned Additional Public Prosecutor further submits that there may be good reasons

to find fault with the remand order, but in these proceedings it was not the remand order which is in challenge but the detention order. The

argument is absolutely correct. In the remand order itself, the Magistrate directed the detenu to be produced on 29.11.20 02. He has not outright

rejected the remand application. Otherwise, he would have said so. We are not here to decide about the merits of the Magistrate's order in the

aforementioned judgment, on which reliance is placed. It is obvious that there the remand was not extended at all and it was merely expressed by

the Metropolitan Magistrate that the hearing was to be held on 29.07.2002. There was no direction by the Magistrate to produce the detenu on a

particular day, thereby it was clear that the remand application itself was rejected on that day and that there the detaining authority could not have

sought for an order of remand on the day when the detention order was passed.

These are the differentiating facts in this case and the
aforementioned relied upon judgment. Therefore, the argument of the learned
Counsel for the petitioner is incorrect and it is rejected.

We are in agreement with the said conclusion and we are of the view that the
same is applicable to the case on hand. Merely because the Detaining

Authority has wrongly mentioned in paragraph 4 that his remand was ordered to
be extended on all occasions, it cannot be presumed that the

Detaining Authority has not applied his mind before passing the impugned order
of detention.

10. It is also relevant to note that in 1992 SCC (CrL.) 1 Abdul Sathar Ibrahim
Manik v. Union of India the Hon^{ble} Supreme Court in guideline-1

has stated, ""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.""
As discussed above, para 4 of the grounds of detention amply

shows that the Detaining Authority was aware that the detenu was already in
custody and by order dated 12.01.2006 the Judicial Magistrate,

Vanur stated that ""accused not produced, to be produced on 25.01.2006."" We
therefore hold that the detaining authority has applied his mind

while passing the detention order. Accordingly, we reject the contention of the
learned Counsel for the petitioner.

11. The learned Counsel for the petitioner, by drawing our attention to the
reference made in para-6 of the Grounds of Detention, contended that

inasmuch as the detenu has not moved any bail application, there is no real
possibility for the detenu to come out on bail and the detaining authority

is not justified in arriving at the satisfaction. We are unable to concur with the
said contention, since para-6 shows that the detaining authority was

aware of the fact that the detenu Arumugam is in remand in Central Prison,
Cuddalore in Crime No. 644/2005 of Kottakuppam Police Station and

has not moved any bail application. He was also very well aware that there is
real possibility of his coming out on bail by filing bail application in the

case in which he was remanded since in similar cases bails are granted by the
concerned Court or Higher Courts after lapse of time. It cannot be

contended that filing of bail application is completely prohibited. In other words,
the detenu is free to file bail application at any moment. In such

circumstances, taking note of the activities of the detenu and in order to prevent him from indulging in such activities in future which are prejudicial

to the maintenance of Public Order, the detaining authority invoked Act 14 of 1982 and we do not find any flaw in the decision arrived at by the

Detaining Authority.

12. Finally, learned Counsel for the petitioner contended that though in paragraph 4 of the grounds of detention the detaining authority has

described the detenu as ""habitually committing crimes"", except the ground case there is no material to show that the detenu was involved in such

instances and prayed for interference in the impugned order.

13. In this regard it is relevant to point out that in Subbaiah v. The Commissioner of Police, Madras City 1993 LW (Crl.) 113 a Division bench of

this court after referring the definition of ""GOONDA"" has observed that the number of instances are immaterial. Even if one incident, in the opinion

of the detaining authority, causes prejudice to the maintenance of public order, he is free to invoke Act 14 of 1982. The following observation in

para-28 of the judgment is relevant.

28. ...The definition of "goonda" refers to the habitual commission or attempt to commit or abatement of the commission of offences specified in

the section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or

abets commission of offences. Hence it is not necessary further for the authority to wait for his committing another act which is likely to cause

prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the

conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also as to whether such acts will

cause prejudice to the maintenance of public order,. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the

maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case it will not be

preventive detention but a case of detention after the commission of the offence. Hence a reading of Section 3(1) together with Section 2(a) and (f)

of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goonda within the meaning of Section 2(f)

they can themselves be taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order.

14. In the light of the above principle, if we consider the act of the detenu herein in committing murder in a public place by assaulting a group and causing insecurity in the minds of the passersby and the residents as well as the nearby shop owners, the detaining authority is justified in detaining the detenu branding him as Goonda under the Act 14 of 1982. Taking all the materials, the detaining authority has concluded that feeling of insecurity prevailed in that area and normal life came to a standstill. Accordingly, we are unable to accept the contention raised by the learned Counsel for the petitioner.

15. It is also brought to our notice by the learned Government Advocate that in the confession statement available at pages 48 to 53 of the paper book supplied to the detenu he has admitted that prior to this incident, by assaulting a gang, he murdered one Dr. Murugiyar. He also admitted that he was detained as Goonda under the very same Act on a previous occasion and came out from prison after a period of 15 months and thereafter by associating with his gang members he committed the murder of Venkat @ Vedhanayagam. The above factual details also support the decision taken by the detaining authority. Accordingly, we reject the contention raised by the learned Counsel for the petitioner.

In the light of the above discussion, we do not find any error or infirmity or valid ground for interference. Hence, this petition fails and the same is dismissed.