
(2014) 03 MAD CK 0033
In the Madras High Court
Case No : H.C.P. No. 2277 of 2013

Vivek @ Guru

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Arms Act, 1959 — Section 25(1)(1B), 3
Constitution of India, 1950 — Article 21, 22, 22(1)
Penal Code, 1860 (IPC) — Section 147, 148, 34, 342, 364(A)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 5

Citation : (2014) CriLJ 3669 : (2014) 2 MLJ(Cri) 266

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Detenu himself is the petitioner and challenge is made to the order of detention dated 20.09.2013 made in Memo No. 1056/BDFGISSV/2013, passed by the 2nd respondent under which the detenu has been branded as a "Goonda" and detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Slum-Grabbers and Video Pirates Act, 1982, hereinafter referred to as Tamil Nadu Act 14 of 1982. As per the grounds of detention dated 20.09.2013, the detenu came to the adverse notice in the following case:

2. In para-3 of the grounds of detention, it is stated that among other things that the detenu is also involved in the commission of the offence, which took place on 11.09.2013 at 06.00 hours, which led to the registration of a case by Sub-Inspector of Police, Law and Order, D. 3 Ice House Police Station, in Crime No. 1069 of 2013 for "Man Missing", subsequently altered into Sections 147, 148, 342, 364(A) and 506(ii) IPC and Section 3 r/w. 25(1)(1B) of Arms Act r/w. 34 IPC. It is further stated that the detenu was arrested on 12.09.2013 at 23.30 hrs

and produced before the learned 13th Metropolitan Magistrate, Egmore, Chennai, and remanded to judicial custody. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Challenging the said order, petitioner is before this Court in this habeas corpus petition.

3. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focused his argument that the right guaranteed under Article 22(1) of the Constitution of India has not been complied with for communicating the order of arrest to the relatives of the detenu. By pointing out page No. 22 of the booklet, the learned counsel for the petitioner submitted that the arrest intimation has been sent to one Dharmaraj, who is not at all the brother of the detenu and therefore, no intimation of arrest has been informed to any one of the relatives of the detenu.

4. We have heard Mr. P. Govindarajan, learned Additional Public Prosecutor appearing for the respondents on the above submission and perused the material documents produced before us.

5. The learned Additional Public Prosecutor pointed out that the police party located the tower location of the kidnappers and traced the place at Koyambedu and arrested the detenu Vivek @ Guru on 12.09.2013 at 23.30 hours, examined him and recorded his statement. However, the intimation of arrest to the relatives of the detenu has not been reflected in the detention order and the only material information available on record is at page No. 22 of the booklet, which reads as under:

6. The fundamental rights as guaranteed under the Constitution of India are mandate. Article 22(1) of the Constitution of India reads as follows:

22. Protection against arrest and detention in certain cases.

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

7. From the guaranteed fundamental rights, a person who is detained shall be informed of his arrest and to his relatives concerned, otherwise it will deprive him of making effective defence and to represent the concerned authority for redressal of his grievance to come out from the clutches of the detention.

8. Clause 5 of Article 22 of the Constitution of India provides when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

9. The learned counsel for the petitioner relied on the decision of the Hon''ble Apex Court reported in A.K. Roy and Others Vs. Union of India (UOI) and Others, . The law laid down by the Hon''ble Apex Court will confer a right on the detenu about the information of arrest to his near relatives. In paragraph No. 75 of the said judgment, it is observed by the Hon''ble Apex Court as follows:

75. Since Section 5 of the Act provides for, as shown by its marginal note, the power to regulate the place and conditions of detention, there is one more observation which we would like to make and which we consider as of great importance in matters of preventive detention. In order that the procedure attendant upon detentions should conform to the mandate of Art. 21 in the matter of fairness, justness and reasonableness, we consider it imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time to time. This Court has stated time and again that the person who is taken in custody does not forfeit, by reason of his arrest, all and every one of his fundamental rights. It is, therefore, necessary to treat the detenu consistently with human dignity and civilized norms of behavior.

10. The above principles would clearly confer a right on the person who has been detained and his relatives should know about the arrest and the communication thereon. In the instant case, the stand of the petitioner is that he is not having any sibling by name Dharmaraj. If that could be the position, the intimation given to the detenu's alleged brother viz., Dharmaraj over phone No. 9841680083 cannot be accepted as he is not the relative of the detenu or person interested and therefore, this Court has come to a conclusion that there is non-compliance of the constitutional mandate of the right of the arrest intimation, which is the law laid down by the Hon''ble Apex Court in A.K. Roy v. Union of India (supra). Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely Vivek @ Guru, made in Memo No. 1056/BDFGISSV/2013, dated 20.09.2013, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.