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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

H.C.P.(MD) No.1550 of 2023

Nowbal ... Petitioner

-vs-

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009

2.The District Collector and
District Magistrate
Office of the District Collector and
District Magistrate
Virudhunagar District

3.The Superintendent of Prison
Madurai Central Prison
Madurai District ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order in Cr.M.P.No.26/2023, dated 17.10.2023, on the file of the second respondent

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and quash the same and direct the respondents herein to produce the body of the petitioner, namely, Nowbal, son of Basheer, aged about 22 years, now confined in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the detenu viz., Nowbal, son of Basheer, aged about 22 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.26/2023, dated 17.10.2023, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.

2. Though several grounds have been raised in the habeas corpus petition, learned counsel for the petitioner would confine his argument to two aspects viz.,

i) There had been a delay on the part of the prison authorities in

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forwarding the representation sent through the counsel to the Government.

(ii) The detention order is vitiated on account of predetermination by the detaining authority.

The detailed submissions of the learned counsel are as under:-

The detention order is vitiated on account of predetermination by the detaining authority. The sponsoring authority had made a request to the detaining authority viz., District Magistrate and District Collector, Virudhunagar, in his capacity as the detaining authority, to detain the petitioner. However, very strangely, the affidavit of the sponsoring authority has been attested by the very same District Magistrate and District Collector, who was expected to consider the request independently and pass orders thereon in accordance with the provisions of Tamil Nadu Act 14/1982.

The learned District Magistrate and District Collector, while attesting the affidavit of the sponsoring authority, had made an endorsement that the deponent solemnly affirmed before him on the date indicated in the affidavit and signed in his presence. The seal of the District Magistrate and District Collector is found affixed in the affidavits sworn to by the sponsoring authority and thereafter, the very same District Magistrate and District Collector has passed the order of detention. The detaining authority being statutory authority to detain, who are likely to engage in acts prejudicial to maintenance

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of public order, is not expected to take part in any of the preparatory works for detention and he should not be seen as a complainant or privy to the decision to make a request to detain a person. If it is demonstrated that the detaining authority himself made the ground work to detain a person, and thereafter, he had passed the order of detention, such orders are liable to be quashed on the ground of pre-determination.

3. In support of his contention, the learned counsel has placed reliance upon the following decisions:

(i) ***Madasamy v. Secretary to Government***, reported in ***(2017) 1 MLJ 541***.

(ii) ***Muthukumar vs. Vellaian vs. The Secretary to Government and others*** [Order dated 24.01.2017 in H.C.P.(MD) No.857 of 2016] and

(iii) ***Gopal Gupta vs. Union of India and others***, reported in ***2021 SCC OnLine Del 3926***.

4. Per contra, learned Additional Public Prosecutor appearing for the respondents, while reiterating the averments made in the counter affidavit, would submit with regard to the first point that in this case the learned

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counsel for the petitioner had sent all the papers viz., the representations to be forwarded to the Government, affidavits and vakalats, etc. relating to several detenus in a single cover, which had to be attested and filed before this Court and the representations for consideration of the Government had to be forwarded to the Government, which consumed much time of the Prison Officials, as they had to process the same by segregating, getting the signature from the prisoners, attested by the Superintendent of Prison and to be forwarded to the Government and returning the affidavits and vakalats to the Advocate and thereby, there had been a delay. He would further submit that in some cases, the detenus had to be taken for production before the Court even at out stations which had also attributed for the delay in forwarding the representation and returning the vakalats and affidavits to the counsel for filing it before the Court. He would further submit that even in the recent communication dated 27.06.2024, the learned counsel had sought for information under the RTI Act in respect of 12 detenus relating to various communications between the detenus and the authorities dealing with the detention orders, thereby causing unnecessary hardship in fast-tracking the matter relating to the detenus, however, such delay, which had been caused at their instance also are being projected as a ground for seeking to set aside the detention order. He would further seek that some guidelines may be

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issued regarding communication sent on behalf of the detenus.

5. Sofar as the second point raked by the learned counsel for the petitioner, the learned Additional Public Prosecutor would submit that mere attesting the affidavit of the Sponsoring Authority by the Detaining Authority would not amount to pre-determination of mind on the part of the Detaining Authority while passing the impugned detention order, as the affidavit of the Sponsoring Authority is only a request by the sponsoring authority to the detaining authority to pass a order of detention, if he is satisfied with the materials placed before him and as such the request of the sponsoring authority can be not taken as a positive request and no significance could be attached to the attestation made by the detaining authority in the affidavit submitted by the sponsoring authority. He would further submit that the Detaining Authority has not passed the impugned detention order based on the said affidavit of the Sponsoring Authority, thereby, there is no pre-determination of mind on the part of the Detaining Authority and hence, prayed for dismissal of the habeas corpus petition.

6. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

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We have also perused the records produced by the Detaining Authority.

7. With regard to the first point, we find force in the submissions made by the learned Additional Public Prosecutor. In several matters, we notice that bunch of papers, affidavits, vakalts and representations relating to several detenus are being sent by one post and covering letter which will, ultimately, result in unnecessary delay as expressed by the learned Additional Public Prosecutor since it would take considerable time for processing the same. We also find that this practice gives an undue and unfair advantage to the detenus to raise it as a ground of delay. While we deprecate the practice of sending representations and other connected papers in respect of several detenus in a single cover, we feel that this practice has to be stopped at once and the representation or any communication to the authorities regarding detenus should be sent independently in respect of individual detenus so as to enable the authorities to process the same without undue delay and also enable the court to have a clear cut view with regard to the delay when it is attributed on the part of the authorities. In the facts and circumstances of the present case, we do not intend to go much deeper into the delay aspect as the same appears to be dubious.

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8. Coming to the second point raised by the learned counsel for the petitioner, a careful perusal of the records produced by the Detaining Authority shows that the affidavit of the Sponsoring Authority has been attested by the Detaining Authority. The law on this issue is no longer *res integra* as the same has already been decided by the Division Bench of this Court in the case of ***Madasamy*** (supra), wherein it has been held as follows:

> *"35. ..... The sponsoring authority must produce materials before the Detaining Authority to show that the detenu is acting in a manner prejudicial to the maintenance of public order and as such, he should be detained under the provisions of Tamil Nadu Act 14 of 1982. Here, in this case, the authority empowered to detain, himself acted as the complainant by attesting the affidavit of the sponsoring authority.*
>
> *36. The Tamil Nadu Act 14 of 1982 was enacted to prevent dangerous activities prejudicial to the maintenance of public order. The Act empowers the State Government, District Magistrate and Commissioner of Police, to deny or deprive the citizen of his liberty without resorting to enquiry or trial. It is only because of the nature of jurisdiction conferred under Tamil Nadu Act 14 of 1982, the power is given to the State Government and few superior officers.*
>
> *37. The detention by invoking the provisions of Act 14 of 1982 is not in the nature of punishment. It is*

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essentially to prevent the detenu from undertaking activities prejudicial to public order.

38. The Commissioner of Police was designated as the authority to detain a person under Act 14 of 1982. He is, therefore, empowered to deprive the detenu of his freedom and personal liberty for a particular period. The Detaining Authority, therefore, must be satisfied that there are sufficient grounds justifying preventive action against the person concerned. He should analyze the materials produced before him by the sponsoring authority and must arrive at a subjective satisfaction that in case the detenu is not detained, he would indulge in activities prejudicial to the maintenance of public order.

39. ***The Commissioner of Police was expected to consider the materials independently and in an unbiased manner without the intervention of the sponsoring authority. He is exercising a statutory function conferred on him by the statute. He is not acting as a police officer, but as an authority empowered to detain a person under Act 14 of 1982. Since the Commissioner of Police is the statutory authority to detain those who are likely to engage in acts prejudicial to maintenance of public order, he is not expected to take part in any of the preparatory works for detention. The Commissioner of Police should not be seen as a complainant or privy to the decision***

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to make a request to detain a person. If it is demonstrated that the Commissioner of Police himself made the ground work to detain a person, and thereafter, passed the order of detention, such orders are liable to be quashed on the ground of pre-determination.

40. The Act mandates that the Commissioner of Police must arrive at a satisfaction on the basis of materials placed before him. In case the materials were collected by him, or he actively took part either to make out the grounds to detain a person or to make a request to detain a person through the sponsoring authority, it would be clear that he acted with a pre-conceived notion to set the scores.

41. The Detaining Authority should act independently and with an open mind. He should not prejudge the issue even before considering the materials produced before him by the sponsoring authority.

42. In the subject cases, it is clear that the Commissioner of Police actively took part in the process of sponsoring the case of the detenus for detention. The affidavits of the sponsoring officers were attested by the Commissioner of Police by sitting in the armchair of the Detaining Authority. He was, therefore, in the know of things, even before the commencement of statutory proceedings for detention. In short, the Commissioner of Police himself was part of the team of complainants

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otherwise called as sponsoring authorities. Thereafter, he turned the chair and acted in a different capacity as the Detaining Authority. The sponsoring authority and Detaining Authority are practically one and the same in all these matters.

43. The active participation of the Detaining Authority in the process of sponsoring the name of the detenus for detention would go to the root of the matter and, therefore, is sufficient to set aside the orders of detention on the ground of pre-determination. We are, therefore, of the view that the detention orders are unsustainable in law." **(emphasis supplied).**

9. Similarly, another Division Bench of this Court in ***Muthukumar***'s case (cited supra), has set aside the detention order on the ground of pre-determination of mind. The relevant portion of the said order is extracted hereunder:

*"10. On reading of the same, it is clear that in this case, the affidavit contains the brief details about the arrest and remand of the detenu along with details about the supporting documents. In the last paragraph of the affidavit, the detaining authority (**sic for sponsoring authority**) has made a request as follows; "I, therefore, request that necessary action may be taken against him under the Tamil Nadu Act 14 of 1982, if deemed fit by the*

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detaining authority." According to the learned State Public Prosecutor, it is only a request by the sponsoring authority to the detaining authority to pass a order of detention, if he is satisfied with the materials placed before him and as such the request of the sponsoring authority can be not taken as a positive request. When that being the position, according to the learned State Public Prosecutor, no significance could be given to the attestation made by the detaining authority in the affidavit submitted by the sponsoring authority. But, in our considered opinion, though there is no positive request made by the sponsoring authority to pass a detention order in his affidavit, the detaining authority, who is a superior officer of the sponsoring authority, has made an attestation affirming the necessity insisted by the sponsoring authority. It is common knowledge that no one would attest or sign in the affidavit prepared by others without verifying the details related to the same. Thus, the detaining authority, before making attestation as higher officer to the sponsoring authority, definitely, would come to know about the necessity of the orders to be passed. Hence, the possibility of predetermination cannot be ruled out.

11.Of-course, it is true that the detaining authority is obligated to consider the materials placed before it independently and then to pass order on merits, without influencing the contents set out in the affidavit. However, the detaining authority cannot play a dual role, i.e., in one

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role he, being as a higher officer, affirms the necessity of the action to be taken and in another role, he, being the detaining authority, passes an order of detention. If the affidavit of the sponsoring authority is signed by some other higher official, then the question of possibility of predetermination would not arise. Since, in this case, the detaining authority played dual role, the contention of the learned counsel for the petitioner that the same led to predetermination of mind on the part of the detaining authority, is acceptable."

10. The High Court of Delhi at New Delhi, following the decision of this Court in the case of ***Madasamy*** (cited supra), has also set aside the detention orders impugned in the case of ***Gopal Gupta*** (cited supra).

11. We are of the view that the above decisions relied on by the learned counsel for the petitioner are squarely applicable to the facts and circumstances of the case on hand, as we find predetermination of mind on the part of the Detaining Authority while passing the impugned detention order, inasmuch as the very same Detaining Authority has attested the affidavit of the Sponsoring Authority and the same is, therefore, liable to be set aside.

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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.26/2023, dated 17.10.2023, passed by the second respondent, is set aside. The detenu, viz., Nowbal, son of Basheer, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[A.D.J.C., J.] **[K.R.S., J.]**

19.07.2024

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AND
K.RAJASEKAR, J.

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