

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1866/2015

Bhuvaneswari

..Petitioner

Vs

1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600009.

2.The Commissioner of Police
Chennai City.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent 17.07.2015 in Memo No.577/BCDFGISSSV/2015 against the petitioner's husband Jaganathan, Male, aged 45 years, son of Balaraman, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.N.R.Elango, Senior Counsel for
Mr.S.Senthil Vel

For Respondents : Mr.M.Maharaja, APP

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.577/BCDFGISSSV/2015 dated 17.07.2015, whereby the husband of the petitioner by name Jaganathan, son of Balaraman aged about 45 years was ordered to be detained under the provisions of 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 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2.The learned counsel appearing for the petitioner would primarily contend that the detenu has been implicated in only one solitary case and that would not attract the provisions under Section 2(f) of the Act so as to detain a person under Act 14 of 1982. Admittedly in the case in hand there is only one solitary case against the detenu and on that basis the order of detention under Section 3(1) of the Act 14 of 1982 has been passed. He draws our attention to the impugned order of detention to reiterate that on 20.05.2015 at about 06.30 hours the complainant's husband left his house by driving his car and at about 07.30 hours, the complainant's driver informed the complainant that the deceased was assaulted by some persons and when the complainant rushed to the spot and saw her husband lying with injuries on his body. She was informed by one Arumugam that four persons came in a car and attacked the deceased. Since there was an enmity between the deceased and his relative Jaganathan, the complainant lodged a complaint. Based on the above single incident, a case was registered under Cr.No.1179/2013, and the impugned order of detention has been passed against the accused under Section 3(1) of the Act 14 of 1982 only on this basis. Excepting this solitary incident, no other incident has been referred to in the order of detention. Therefore, the impugned order of detention is liable to be interfered with.

3.According to the learned counsel for the petitioner, as per Section 2(f) of the Act, a Goonda would mean, a person either by himself or as a member of or a leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable. Therefore, as per the clear definition of the Act to detain a person under At 14 of 1982, the detaining authority has to satisfy two conditions, namely, firstly the materials available on record should establish that the individual could be branded as a Goonda and secondly, after branding a person as a Goonda, the detaining authority further should be satisfied that the acts or any one of the acts of the said person are/is prejudicial to the maintenance of public order. If such subjective satisfaction is arrived at by the detaining authority, then the detaining authority will be justified in passing the order of detention, as that would prevent such an individual from acting in any manner prejudicial to the maintenance of public order. But in the instant case, the case of the prosecution is that when the complainant was driving a bus, the detenu came in front of the bus and damaged the wind screen of the bus by throwing stones and threatened the complainant and the conductor of the bus with dire consequences. No other incident has been referred to therein to show the habituality of the detenu. He does not refer to the frequency of the occasions. Therefore, when no other instances or occasions have been referred to, to show that the detenu has been habitually committing the offence, 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. Moreover the solitary incident referred to in the grounds of detention would not be prejudicial to the maintenance of public order. Therefore he sought for setting aside the order of detention passed against the detenu. In support of his submission, the learned counsel appearing for the petitioner placed strong reliance on the judgment of the Full Bench of this Court reported in 2011 (4) CTC 353 (Arumugam vs. State of Tamil Nadu) which was later followed by a Division Bench of this Court in the decision rendered in H.C.P.No.313 of 2012, on 15.06.2012.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondents would submit that even a solitary incident forming part of number of acts of a particular individual is sufficient to pass an order of detention, if such an act is prejudicial to the maintenance of public order. According to him what is required to be seen by the detaining authority is whether the particular act of a person would be prejudicial to the maintenance of public order. He further adds that statute does not make any distinction between the ground case and the other adverse cases and as such there is no bar for the detaining authority to arrive at the subjective satisfaction to the effect that a single act of a individual would be sufficient to be prejudicial to the maintenance of public order. Hence according to him, the order of detention does not suffer from any infirmity nor illegality warranting interference by this Court.

5.We have heard the rival submissions carefully with regard to the facts and citation.

6.To appreciate the contentions put forth by the learned counsel appearing on either side, we would like to extract paragraph No.3 of the grounds of detention which runs as follows:

"3..... On 20.05.2015, at about 06.30 hours the complainant's husband Thiru Vetriselvan left his house by driving his Toyota Etios Liva car bearing Reg.No.TN-11-#-0245 and he was wearing a white colour full slack shirt and a maroon colour lungi. At about 07.30 hours the complainant's driver Thiru Siva rushed to the complainant's house with tension and informed the complainant that some persons assaulted the complainant's husband Thiru Vetriselvan near their office. Immediately, the complainant rushed to her husband's office at No.2,156, Pachaiammal Catering shop, 3rd Main Road, Raghava Nagar, Moovarasampettai and found her husband Thiru Vetriselvan in a pool of blood on the floor with

blood injuries over his left side of head, neck and hands. Thiru Arumugam who was present at the spot, informed the complainant that three or four persons came in a black colour Ford Car bearing Reg.No.TN-10-E-4332 and assaulted the complainant's husband Thiru Vetriselvan and wscaped from the spot. Immediately, the complainant took her husband Thiru Vetriselvan, in a car to a nearby private hospital at Medavakkam Main Road, Madipakkam and the doctors who examined the complainant's husband Thiru Vetriselvan, declared him dead. The complainant believed that accused Thiru Jaganathan and his associates have committed murder of her husband Thiru Vetriselvan. Based on the complaint from Tmt Clarence Devasundari in this regard, the Inspector of Police has registered a case in S7 Madipakkam Police Station Crime No.1179/2013 u/s.302 IPC and taken up for investigation....."

7.It is clear from the narration of the above facts that excepting the above solitary incident, no other incident has been referred to in the impugned order. Admittedly only on the basis of this, the order of detention has been passed against the detenu. The point for consideration is whether the single incident of which the detenu has been branded as a Goonda, would be sufficient for sustaining the order of detention passed under the Act 14 of 1982.

8.In the judgment of Full Bench of this Court rendered in Arumugam vs. State of Tamil Nadu, reported in 2011 (4) CTC 353, (cited supra), the Full Bench has laid down the following law.

"26. In view of the foregoing discussions, we answer the question referred to us in the following manner:

(i) To brand a person as Goonda as defined under Section 2(f) of the Act, is is absolutely necessary that there are to be more than one case involving offences punishable under the Chapters of the Indian Penal Code as enumerated in Section 2(f) of the Act.

(ii) To detain a Goonda, it is not necessary that there are to be more than one case which has got the propensity of disturbing the maintenance of public order. Out of all the cases against him even if a single incident resulting in a single case has the propensity of affecting the even tempo of life and public tranquillity being prejudicial to the maintenance of public order that by itself would be sufficient to pass a valid order of detention. There cannot be any strait

jacket formula or universal rule in respect of number of cases because the necessity for passing a detention order depends upon the facts and circumstances of each case. "

9. Following the said decision of the Full Bench subsequently a Division Bench of this Court, by order dated 15.06.2012 made in HCP(MD)No.313 of 2012, has held as follows:

"12. Applying the proposition laid down in the above Larger Bench case, recourse to preventive detention law when ordinary law of land can deal with a situation, renders the detention illegal. Further, the reported single act in this case, does not have the propensity of affecting the even tempo of life and public tranquillity being prejudicial to the maintenance of public order. In fact, it is a case of settling the score on a personal vendetta, the detenu has murdered the deceased and the said solitary incident could very well be dealt with in the normal course. This referred single incident relates to smaller circle only. Further, the solitary incident would not manifest the potentialities of a detenu in such activities. There is no conclusion that this incident would give rise to communal tension and apprehension of outbreak of riot affecting public order. It is an act confined to only to a few individual directly involved as distinct from a wide spectrum of the public and it could cause problem of law and order only. It is a trite law that it is the length, magnitude and intensity of the terror unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. In a recent judgment of the Hon'ble Supreme Court, reported in (2012) 2 SCC 176 (Yumman Ongbi Lembi Leima v. State of Manipur), a Larger Bench has held as follows:

"27. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb

public law and order, warranting the issuance of such an order. An individual incident of an offence under the Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention."

13. Therefore, applying the above settled principles, we are of the considered view that the ordinary law of the land ie., the Indian Penal Code can very well deal with the situations and the order of preventive detention passed against the detenu herein would take away the right to liberty guaranteed by Article 21 of the Constitution of India. As held by the Larger Bench of the Hon'ble Supreme Court (2011) 3 MLJ (Cr1) 422 (SC) (cited supra) preventive detention is only an exception and cannot ordinarily nullify the full force of the main rule, which is the right to liberty in Article 21 of the Constitution of India. Fundamental rights are meant for protecting the civil liberties of the people and not to put them in jail for a long period without recourse to a lawyer and without a trial.

14. Therefore, we hold that considering the propensity of the act reported, it can never be classified as one coming under public order. At best it would come under the category of law and order.

15. In the light of the above fact and law, the detention order dated 16.02.2012 as against the detenu is not warranted and hence it is illegal and liable to be set aside."

10. The law laid down by the above Full Bench decision and the subsequent decision of the Division Bench rendered, following the Full Bench judgment (cited supra), would make it very clear that recourse to preventive law when ordinary law can deal with a situation, renders the detention illegal. Further, the reported single act in this case, admittedly, does not have the propensity of affecting even tempo of life and public tranquillity being prejudicial to the maintenance of public order. Reported incident on 20.05.2015 would show that the detenu along with others committed the murder of the deceased Vetriselvan. Nothing has been mentioned about that incident to state that it would affect the tempo of life and public tranquillity. At last it could be said that the detenu has caused only breach of law and order and he has not acted in any manner likely to cause disturbance of public order. It all depends upon the question of degree and the extent of the reach

of the act upon the society. Therefore this solitary incident on an individual can hardly be said to disturb public peace or place public order in jeopardy, so as to bring the case within the purview of the Act providing for preventive detention. Further, the detaining authority has failed to consider the difference between 'law and order' and 'public order'. Moreover, no materials have been made available before this Court to show that the detenu is a habitual offender in order to invoke the provisions of Tamil Nadu Act 14 of 1982 against him. This solitary incident pointed out by the detaining authority in the detention order would not manifest the potentiality of the detenu in such activities. Moreover, there is no conclusion that this incident would give rise to communal tension and apprehension of outbreak of riot affecting public order. It is an act confined to only a few individuals directly involved as distinct from a wide spectrum of the public and it could cause problem of law and order only.

11. It is trite law that it is the length, magnitude and intensity of the terror unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting public order from that concerning law and order. Moreover, as rightly pointed out by the learned counsel for the petitioner, in the Full Bench judgment referred above, while laying down the law, this Court has only stated that out of number of cases even a single incident could be considered, provided it has the propensity of affecting even tempo of life and public tranquillity being prejudicial to the maintenance of public order. In respect of the reported incident in this case, no material on record to show that the reach and potentiality of the reported single incident was so great so as to disturb even the tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. Mere citation of words in the order of detention that the detenu created terror, people started running helter-skelter, etc. are more in the nature of a ritual rather than with any significance to the content of the matter. Therefore, we have to hold that the single incident referred to herein is not relevant for sustaining the impugned order of detention.

12. It is needless to add that detention passed is a preventive one and not punitive. Article 22(3)(b) of the Constitution of India permits preventive detention and the same cannot be held to be illegal. But the power of preventive detention operates within very narrow limits, otherwise it would take away the right to liberty guaranteed by Article 21 of the Constitution of India, which was won after long arduous historic struggles. As held above, if ordinary law of the land (IPC and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

13.In the light of the above well settled law and clear facts, we have no hesitation to hold that the impugned detention order suffers from infirmity and illegality, warranting interference by this Court.

14.Accordingly, the habeas corpus petition is allowed and the detention order passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case or cause.

15.At this juncture, learned Additional Public Prosecutor submitted that the investigation in Cr.No.1179/2015 has been completed and final report has been filed and the case has been committed to the Court of Sessions in PRC No.42/2015 on the file of the learned Judicial Magistrate, Alandur and that the learned Magistrate has not been able to complete the committal proceedings in view of the fact that one of the accused by name Bala @ Balakrishnan is absconding and that if the detenu's detention order is quashed, he would also resort to the same dilatory tactics and would delay the trial proceedings. It is further submitted that the next date of hearing is on 04.01.2016.

16.Considering the submissions made by the learned Additional Public Prosecutor, this Court directs the detenu Jaganathan to file an affidavit before the Committal Magistrate, on being released on bail by the regular Court, that he will not abscond and that he will appear and participate in the trial proceedings. On failure to comply with the above direction of this Court by the detenu, the learned Magistrate/Trial Court is entitled to take appropriate action against the detenu in accordance with law as if the conditions have been imposed and the detenu released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

AP

Sub Assistant Registrar

To

- 1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600009.
- 2.The Commissioner of Police
Chennai City.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai-9.
5. The Public Prosecution, High Court, Madras.
6. The Judicial Magistrate, Alandur.
7. -do- Through The Chief Judicial Magistrate, Alandur.

VD(CO)
EU(27/01/2016)

H.C.P.No.1866/2015

सत्यमेव जयते

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