

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.8.2014

Pronounced on: 09.4.2015

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.22920 of 2014 &
M.P.Nos.1 and 2 of 2014

Amutha

.. Petitioner

Vs.

1. The State of Tamil Nadu rep. by its
Secretary to Government,
Department of Home Affairs/
Prohibition & Excise,
St. George Fort, Chennai.
2. The Commissioner of Police,
Greater Chennai Metropolitan,
Police Commissionerate Road,
Egmore, Chennai-8.
3. The Inspector of Police,
F-2, Egmore Police Station,
Egmore, Chennai-8.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, for the issue of a writ of Mandamus forbearing the respondents from passing orders against the son of the petitioner namely A.Ashok Kumar son of Late Anbazhagan, aged about 25 years, residing at No.33, Dr.Santhosh Nagar, Egmore, Chennai-8 from detaining him under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabber, Act, 1982 (Act 14/82) and further to direct the 3rd respondent to remove the name of the petitioner's son, from the History Sheet maintained by the 3rd respondent under the Police Standing Orders.

For Petitioner	:	Mr.Sahadevan
		For Mr.S.Jimraj Milton
For Respondents	:	Mr.R.A.S.Senthilvel, Addl.G.P.

O R D E R

The petitioner has come up with the above writ petition seeking the issue of a writ of mandamus to forbear the respondents from passing orders of Preventive Detention against her son under Tamil Nadu Act 14/1982 and also to remove his name from the History Sheet maintained by the third respondent in terms of the provisions of the Police Standing Orders.

2. I have heard Mr.Sahadevan, learned counsel for the petitioner and Mr.R.A.S.Senthilvel, learned Additional Government Pleader for the respondents.

3. It is the case of the petitioner that her son is an active member of an organisation known as "Revolutionary Student - Youth Front" and that he had participated in several struggles for various public causes. It is claimed by the petitioner that her son was arrested on 17.8.2014, but the police showed as though he was arrested only on 19.8.2014. He was produced before the Judicial Magistrate, Saidapet, on 19.8.2014 and remanded to custody.

4. The petitioner claims that her son was arrested in connection with Crime No.961 of 2014 for alleged offences under Sections 341, 336, 392, 397 and 506(ii) of IPC and that the respondents had also created records to detain him under Tamil Nadu Act 14 of 1982. Therefore, the petitioner has come up with the above writ petition to prevent an order of Preventive Detention being slapped on her son.

5. The third respondent has filed a counter affidavit. It is stated in the counter affidavit that the petitioner's son was involved in the following criminal cases:-

a) G-3 Kilpauk Police Station Cr.No.546/2010 registered under Section 353, 323, 506(i) IPC and 3 read with 177 Motor Vehicles Act and the case is under trial.

b) F-2 Egmore Police Station Cr.No.183/2014 registered under Section 147, 148, 294(b), 323, 506(ii) IPC and Section 4 of TNPWH Act 1998 and this case is under investigation.

c) F-2 Egmore Police Station Cr.No.675/2014 registered under Sections 341, 294(b), 324, 506(ii) IPC and the case is under investigation.

d) F-2 Egmore Police Station Cr.No.677/2014 registered under Sections 147, 332, 224 and 225 IPC and the case is under investigation.

e) F-2 Egmore Police Station Cr.No.961/2014 registered under Sections 341, 336, 392, 397 and 506(ii) IPC and the case is under investigation.

6. It is also stated in the counter affidavit of the third respondent that the petitioner's son was committing offences in the name of an organisation called RYSF and creating panic among the people of the area and that recourse to normal criminal law would not have a desired effect of preventing him from indulging in such activities that are prejudicial to the maintenance of public order. Therefore, on the above basis, the third respondent has stated in the counter affidavit that the other respondents are taking necessary steps to detain the petitioner's son under Tamil Nadu Act 14/1982.

7. In the light of the above, two contentions are advanced by the learned counsel for the petitioner. They are (i) that the offences complained of against the petitioner's son are those that can be dealt with under the ordinary law of the land, and (ii) that the jurisdiction of this Court extends to an examination of the right of the respondents to pass an order of preventive detention.

8. For examining the first question, it is necessary to take note of the statutory mandate. Tamil Nadu Act 14/1982, as its Preamble discloses, is an Act to provide for the Preventive Detention of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers for preventing their dangerous activities prejudicial to the maintenance of Public Order. A careful look at the definition in Section 2(a) of the Act would show that apart from being a Bootlegger or Drug Offender or Goonda or Immoral Traffic Offender or Slum Grabber, the activities of the person concerned should also affect adversely, the maintenance of Public Order. The explanation to Section 2(a) indicates that Public Order will be deemed to have been affected adversely or would be deemed likely to be affected adversely, if any of the activities directly or indirectly causes or intended to cause any harm, danger or alarm or a feeling of insecurity among the general public or any consequence thereof or a grave or wide spread danger to life or public health.

9. A careful look at the counter affidavit shows that the petitioner's son is not branded as a Bootlegger or Drug Offender or Immoral Traffic Offender or Slum Grabber. He is sought to be branded as a Goonda. The expression 'Goonda' is defined in Section 2(f) to mean a person who, either by himself or as a member or as a leader of a gang, habitually commits or attempts to commit or abets the commission of any offence punishable under Chapter XVI, Chapter XVII or Chapter XXII to the Indian Penal Code.

10. Keeping the above in mind, let me now come back to the case on hand. As per the counter affidavit of the third respondent, the petitioner's son is involved in 5 Criminal Cases. The offences

alleged against the petitioner's son in relation to the Indian Penal Code are 147, 148, 224, 225, 294(b), 323, 324, 332, 336, 341, 353, 392, 397, 506(i) and 506(ii) in all the 5 Criminal complaints put together. Out of the above offences, the offences under Sections 323, 324, 332, 336, 341 and 353 fall under Chapter XVI of the IPC. The offences under Sections 392 and 397 fall under Chapter XVII of the IPC. The offences under Sections 506(i) and 506(ii) fall under Chapter XXII. Therefore, the offences alleged against the petitioner's son fall within the prescription contained in Section 2 (f) of Tamil Nadu Act 14/1982.

11. It is no doubt true that the Supreme Court pointed out in *Kishori Mohan Bera vs. State of West Bengal* [(1972) 3 SCC 845] that every act affecting Law and Order need not necessarily affect the public order. The true test is not the kind, but the potentiality of the act in question. One may affect only individuals, while the other though of a similar kind may create such an impact that it would disturb the even tempo of the life of the community.

12. In *Sushanta Goswami, In Re* [(1969) 1 SCC 273], the Supreme Court pointed out that the following grounds were not relevant to maintenance of public order:-

- (1) that the petitioner had been committing offences of forming unlawful assembly, assaulting the police and peaceful inhabitants, snatching away cash and valuables, teasing school girls and criminal intimidation;
- (2) those relating mainly to the question of Law and Order;
- (3) assaulting;
- (4) armed with dagger and snatching property;
- (5) committing burglary;
- (6) committing theft and robbery;
- (7) showing ugly gesture and posture to some women;
- (8) grazing of cattle on maize plants;
- (9) removing grain bags in clandestine manner;
- (10) associating with anti-social elements; and
- (11) reasonable suspicion involving in the offence.

It was also held in the same decision that acting with a large number of associates and committing acts which could have lead to the disturbance of public order, is a ground relevant for detention. However, the court pointed out that if some grounds of detention are not relevant to public order, the order of detention cannot be upheld.

13. In *Munagala Yamma vs. State of A.P.* [(2012) 2 SCC 386], the Supreme Court pointed out that if the offences complained of, are of a nature which can be dealt with under the ordinary law of the land, a recourse to Preventive Detention is not warranted. The court held that Preventive Detention cannot be used as a substitute for the ordinary law and absolve the investigating authorities of their

normal functions of investigation.

14. Therefore, it appears that Courts have formulated two fundamental principles, namely (i) that it is not every crime that qualify for an order of preventive detention, unless it impacts public order, and (ii) that an order of preventive detention cannot be used as a substitute for the ordinary law. Hence, the first contention of the petitioner is fairly well founded.

15. But, unfortunately, the real problem is as to whether this Court can examine the above questions, in a writ petition under Article 226, filed as a pre-emptive bid to restrain the respondents 1 and 2 from passing an order of preventive detention. The two questions indicated in the preceding paragraph may have to be examined only when an order of preventive detention is passed. Every proposal, assuming that there is a proposal, to slap an order of preventive detention upon the petitioner's son, cannot be examined by this Court. This is why the second question that arises for consideration, relating to the jurisdiction of this Court, assumes significance.

16. It is true that the power of this Court to examine the correctness an order of preventive detention extends even to the pre-execution stage. In *Additional Secretary vs. Alka Subhash Gadia* [(1992) Supp. (1) SCC 496], a Constitution Bench of the Supreme Court was concerned with a question as to whether a detenu or anyone on his behalf is entitled to challenge the detention order without the detenu submitting or surrendering. While answering the said question, the Supreme Court pointed out in para 30 that the powers under Articles 226 and 32 are wide and are untrammelled by any external restrictions. However, the Court pointed out that there are self imposed restraints. Finally, the Court summarised the position as follows:-

"Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to

do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the prevention of the law in question."

17. In *Deepak Bajaj vs. State of Maharashtra* [(2008) 16 SCC 14], the Supreme Court again reiterated that the Constitutional Court has the power to entertain a writ petition against Preventive Detention even at the pre-execution stage. The court pointed out that once a person comes to court at the pre-execution stage and satisfies the court that the Preventive Detention is illegal, there is no reason as to why the court should stay its hands and compel him to go to jail, only to be released later. Incidentally, the court pointed out in this case that the five exceptions carved out in *Alka Subhash Gadia* are only illustrative and not exhaustive.

18. After the law was so settled, a question arose once again as to whether the five exceptions carved out in *Alka Subhash* were exhaustive or not. This question was examined by the Supreme Court in *Subhash Popatlal Dave vs. Union of India* [(2012) 7 SCC 533]. The Court held therein that the right of a proposed detenu to challenge a Preventive Detention Order at the pre-execution stage, need not be confined to the five exceptions enumerated in *Alka Subhash* and those five exceptions were not exhaustive. Therefore, it is now clear that there may be situations warranting interference at the pre-execution stage, though the Court may exercise a lot of restraint.

19. As pointed out by J.Chelameswar, J, in his separate but concurring opinion in *Subhash Propatlal Dave-II* (2014) 1 SCC 280, the task of the Constitutional Court to maintain a balance between liberty and authority is never done because new conditions of today upset the equilibriums of yesterday and the sea-saw between freedom and power makes up most of the history of Governments, which, on a long view consists of repeating a painful cycle from anarchy to tyranny and back again. (quoted from the opinion of Jackson, J in *American Communications Association vs. Douds*). The only note of caution sent in *Subhash Popatlal Dave-II*, was that an order of Preventive Detention cannot be quashed merely due to long lapse of time on the specious plea that there is no live link between the order of Detention and the situation on hand.

20. From the above decisions, it is clear (i) that this Court has jurisdiction to entertain a challenge to an order of preventive detention, even at the pre-execution stage, and (ii) that however, this Court will exercise a lot of restraint, imposed upon itself, before invoking its power at the pre-execution stage.

21. But, unfortunately for the petitioner, even the stage at which this Court can examine the issue, has not arisen. The petitioner has come, not at the pre-execution stage, but at a stage when no order has been passed. He has actually come at the pre-conception stage and not at the pre-execution stage. No Court, including the Supreme Court, has so far recognised the power of this Court to examine the validity of a decision which is only in the mind of the detaining authority and which is yet to find a shape in the form of a written order. After all, before an order of preventive detention is passed, the competent authority has to take into account several things. The counter affidavit of the third respondent shows that he has merely made a recommendation to the competent authority. Even before the competent authority could look into it, the petitioner has come up. The jurisdiction of this Court cannot be so enlarged as to take a CT scan of the brain of the competent authority and find out whether the decision he may possibly take would be right or wrong. Therefore, I am of the considered view that the writ petition cannot be entertained at this stage. Hence, the writ petition is dismissed. There will be no order as to costs. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr/kpl

To

1. The Secretary to Government,
Department of Home Affairs/Prohibition & Excise
St.George Fort, Chennai.
2. The Commissioner of Police, Greater Chennai Metropolitan,
Police Commissionerate Road, Egmore, Chennai-8.
3. The Inspector of Police, F-2, Egmore Police Station,
Egmore, Chennai-8.

1 cc to Government Pleader, Sr.No.20170

W.P.No.22920 of 2014

vsn(co)
pmk.23.4.2015