

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2017

CORAM

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

H.C.P.Nos. 260, 305, 364 and 381 of 2017

1. S. Shahistha Begum .. Petitioner in H.C.P.No.260 of 2017
 2. K.Madhu Nila .. Petitioner in H.C.P.No.305 of 2017
 3. L.Thenmozhi .. Petitioner in H.C.P.No.364 of 2017
 4. Assain Abbas .. Petitioner in H.C.P.No.381 of 2017
- vs.

1. The State represented by its
The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu
Fort St. George,
Chennai- 600 009.
2. The Commissioner of Police,
Coimbatore Office, Coimbatore City,
Coimbatore. .. R-1 and 2 in all H.C.Ps.
3. The Inspector of Police,
E-1, Singanallur Police Station,
Coimbatore City, Coimbatore. .. R-3 in in H.C.P.No.364 of 2017

Prayer in H.C.P.No.260 of 2017 :-

Petition filed under Article 226 of the Constitution of India, praying for to issue a writ of Habeas Corupus, calling for the records, relating to the order of detention, in C.No.05/G/IS/2017 dated 31.01.2017 passed by the 2nd respondent, and to quash the same, and also to produce the detenu Mohammed Riswan, aged 30 years, S/o Iqbal, who is presently detained in the Central Prison, Coimbatore to be produced before this Hon'ble Court and set him liberty.

Prayer in H.C.P.No.305 of 2017 :-

Petition filed under Article 226 of the Constitution of India, praying for to issue a writ of Habeas Corupus, calling for the records, relating to the order of detention, in C.No.12/G/IS/2017, dated 06.02.2017 passed by the 2nd

respondent, and to quash the same, and also to produce the body of the detenu, viz., V.Kannan S/o Vellaisamy, before this Hon'ble Court and set him liberty.

Prayer in H.C.P.No.364 of 2017:

Petition filed under Article 226 of the Constitution of India, praying for to issue a writ of Habeas Corpus, calling for the records, relating to the order of detention, in C.No.09/G/IS/2017 dated 02.02.2017 passed by the 2nd respondent, and to quash the same, and to direct the respondents to produce the body of the detenu, Loganathan S/o. Balakrishnan, Hindu, aged 40 years, who is now confined in the Central Prison, Coimbatore, to be produced before this Hon'ble Court and set him liberty.

Prayer in H.C.P.No.381 of 2017 :-

Petition filed under Article 226 of the Constitution of India, praying for to issue a writ of Habeas Corpus, calling for the records, relating to the order of detention, in C.No.11/G/IS/2017 dated 02.02.2017 passed by the 2nd respondent, and to quash the same, and to direct the respondents to produce the body of the petitioner's brother, the detenu by name A.Saleem, S/o. Abbas, aged 40 years, who is now confined in the Central Prison, Coimbatore, to be produced before this Hon'ble Court and set him liberty.

For Petitioners in
HCP Nos.364 and 381/17 : Mr.W.Camyles Gandhi

For Petitioner in
HCP No.305/17 : Mr.T.Balaji

For petitioner : Mr. R.Sankarasubbu,
in HCP.No.260/17 Senior Counsel for
M/s.D.Mario Johnson

For Respondents : Mr.V.M.R.Rajendran
in all W.Ps. Additional Public
Prosecutor

WEB COPY
COMMON ORDER

(Order of the Court was delivered by Nooty Ramamohana Rao, J.)

All these four Writ Petitions can be disposed of, by this common judgment, as the grounds urged are one and the same.

2. The Commissioner of Police, Coimbatore, passed individual Detention Orders against several accused persons,

exercising the power available to him, under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (henceforth, referred to as, 'the Act, for the sake of brevity). He passed those Orders of Preventive Detention upon satisfaction that, each one of those detenus answered the description of the term 'Goonda', as defined under Section 2(f) of the Act. On the same day, the grounds of detention have also been drawn and served on the detenus. Apart from serving the Detention Orders and the grounds of detention, the detaining Authority has also made available the material, which has been placed for his consideration by the Sponsoring Agency. The entire material, which has been thus placed for consideration of the detaining Authority by the Sponsoring Agency, running to more than 520 pages has been supplied to the detenu and it was considered by us.

3. Though this is a common judgment, involving four cases, for the sake of brevity, the facts of the case are being taken from the Petition, in H.C.P.No.260 of 2017.

i) One S. Basheer, a resident of Kamarajar Road, Ramanujam Nagar, Coimbatore, lodged a complaint with the Sub Inspector of Police, Crime E-1, Singanallur Police Station, Coimbatore City, on 05.10.2016, setting forth therein that, on that day, at about 05.40 a.m., twelve persons arrived at his residence in two Innova Cars, and they entered into his house posing as Officers of Income Tax Department. It is also stated that two of those persons, have also put on uniform, which normally, is put on by Police Personnel. It is also alleged that, those two persons were holding pistols and cudgels in their hands. The entire show was put as if a raid is being carried out by the Income Tax authorities. Thereafter, they have searched each and every room of the house, and insisted upon the complainant to open the iron locker placed at the first floor of the house, and when he refused to open, they dragged the locker out and loaded it in one of the cars, and also snatched away the cell phones of the inmates of the house, and removed the CCTV camera disc, and also took the complainant along with them in another Car. However, they dropped the complainant near Neelambur, Avinashi Road, Coimbatore, at about 06.45 hours, and sped away in their Cars.

ii) It appears that the gold, weighing 150 sovereigns and cash of Rs. 40,00,000/- have been taken by the ransackers. Regarding the said incident, the Police have registered the complaint, as Crime No.782 of 2016, and took up the investigation, and it is in that process, arrested one I.Mohammed Riswan, on 02.11.2016, at 11.30 hours while he was staying at Room No. 205, "Hotel Grand Plaza", Palakkad Road,

Kuniamuthur, Coimbatore. It is at the instance of the said I.Mohammed Riswan, the gold ornaments, weighing about 199.490 grams and cash of Rs. 3,50,000/- robbed from the house of the complainant, S.Basheer, have been seized under the cover of Mahazarnama, drawn in the presence of independent witnesses.

iii) In Para No.5 of the grounds of detention, the detaining Authority has observed as follows :-

"In this case, I. Mohammed Riswan, was produced before the Hon'ble Judicial Magistrate No. VI, Coimbatore on 02.11.2016, and remanded to judicial custody till 16.11.2016. He was lodged in Central Prison, Coimbatore. The remand period of I. Mohammed Riswan was periodically extended and stands posted for 08.02.2017. During further investigation of the case, the section of law of this case was altered from 170, 419, 420, 451 to 170, 120 (b), 395 r/w 397 IPC and 27 Indian Arms Act 1959 on 30.10.2016. Investigation in this case is pending."

iv) In Para No. 7, it was also noted as under :-

"I am aware that I. Mohammed Riswan was remanded to Judicial custody in this case and on his behalf a bail application in CrI. OP. No. 1646/2017 has been filed before the Hon'ble High Court, Chennai, and the same was granted subject to furnishing necessary sureties and condition on 30.01.2017. The copy of the above order has been enclosed in the booklet containing the related documents/records. If he produces necessary sureties as per the court order and is released on bail, he will indulge in such activities, which will be prejudicial to the maintenance of public order. Further, recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On careful consideration of all the records placed before me, I am satisfied that I. Mohammed Riswan is a "GOONDA" and that there is a compelling necessity to keep him under detention as per provisions of the Tamil Nadu Act Act 14 of 1982 in order to prevent him from indulging in activities which are prejudicial to the maintenance of public peace and order."

4. Heard Shri.R. Sankarasubbu, the learned Senior Counsel appearing for the petitioners, and the learned Additional Public Prosecutor for the State.

5. The learned Senior Counsel for the petitioners, while leading the arguments fortifying the petitioners' case would contend that, only a single and solitary instance of a complaint has been made the basis for passing the Detention Orders. So far, the investigation is not complete, and no final report has been placed before the Competent Court, and no attempt, whatsoever, has been made to secure conviction of the accused persons in the crime registered in accordance with law and, without taking any such effective measures, contended the learned Senior Counsel for the petitioners that, mechanically, it was repeated in the Detention Orders that 'the ordinary course of criminal law would not have produced the desired result of effectively preventing the detenus from indulging in similar activities', as narrated in the complaint (referred to supra).

6. The learned Senior Counsel appearing for the petitioners would urge that, when a single solitary instance of the complaint in regard to alleged involvement in a criminal case is made the basis for passing the preventive Detention Orders, great care and caution is required to be applied by the detaining Authority, for arriving at the subjective satisfaction that the detenus deserve to be detained. This apart, the learned Senior Counsel for the petitioners would urge that, when the remand reports have been presented before the learned Magistrate, the learned Magistrate passed an order on the margin space available in the remand report. Thus, the orders have been passed by the learned Magistrate remanding the accused in his own hand. But, however, the said orders are apparently passed in English Language, but copies of such remand orders have not been made available to the petitioners either. This apart, the material, which has been furnished to the detenus, (which, in fact, is what has been placed for consideration of the detaining Authority) contained photocopies of the remand report submitted by the Police and the orders passed by the learned Magistrate in the margin space available thereon. But, however, the remand report is not legible at all, as the ink has faded off substantially, when repeated copies are made, not from the original, but from its replica.

7. It is, therefore, contended by the learned Senior Counsel appearing for the petitioners that, the documents, which formed the basis for passing the Detention Orders are not readable, and that, it has virtually prevented the detenus from making a very effective representation against the allegations averred in the Detention Orders itself. This apart, the learned Senior Counsel for the petitioners has also urged before

us that, one R.Muthukrishnan @ Krishnan, is also detained for his alleged involvement in the same offence, said to have been committed by the present detenus. But, however, in the case of R. Muthukrishnan @ Krishnan, the Advisory Board constituted under Section 10 of the Act has rendered its opinion on 10.03.2017, holding that there is not sufficient material/grounds for preventively detaining the said detenu, Shri R. Muthukrishnan @ Krishnan. Consequently, the State Government has passed orders through their G.O. Rt. No 1369, Home, Prohibition & Excise (XII) Department, dated on 20.03.2017, setting him at liberty forthwith, by revoking the Order of Detention.

8. It is, therefore, urged before us by the learned Senior Counsel for the petitioners that, if one of the co-accused had been granted the benefit of the revocation of the preventive Detention Order, not extending the same benefit to the detenus, who are similarly placed as that of the co-accused would obviously amount to invidious discrimination.

9. Per contra, the learned Additional Public Prosecutor would urge that, even a single solitary instance, which is capable of shaking the morale and confidence instilled in the minds of the people of the Society at large, can justifiably and validly form the basis for passing an order of preventive detention by the Competent Authority. If a daring robbery is undertaken, the shock waves emanating therefrom, take a long time for getting absorbed by the Society at large. It is the intensity and the nature of the act, which formed part of the complaint lodged in the instant case, what really matters. It is also urged by the learned Additional Public Prosecutor that, maintaining Law and Order in the Society, is of top priority, for ensuring a smooth sail of the Society at large. He would therefore, urge that, keeping in mind, the larger public interest, since the remand orders have been passed by the learned Magistrate in the very presence of the accused, it being a very short order, which is usually and normally passed by the Magistrates when the accused are produced for the first time before them. The accused persons are all aware of the contents of the remand orders, inasmuch as, they have moved the Bail Applications, seeking their release from judicial custody.

10. The learned Additional Public Prosecutor, therefore, would urge that, not making available separately, the copy of the remand orders, does not vitiate the sustainability of the Detention Orders at all. The learned Additional Public Prosecutor would alternatively contend that, the remand orders, which have been penned by the learned Magistrate in his own hand, are not at all difficult to be read by anyone, perhaps, but, it will only require a little more effort on the part of

one to read it carefully. It is not, as if, that the contents of the remand orders are totally difficult to be read.

11. Preventive Detention Order is the result of subjective satisfaction, which stands in contrast to an objective satisfaction of the detaining Authority. Hence, Article 22 of our Constitution has provided for certain inbuilt measures, which can secure relief against any possible abuse of powers. It is fundamentally required to provide for an effective representation to be submitted by the detenu. That is one of the essential safeguards against possible misuse of the power available with the detaining Authority and for the purpose of making effective representation by the detenu, the material, which has been relied upon by the detaining Authority, for formation of his opinion should be made available to the detenu in a form and language, known and understood, by the detenu.

12. The Courts have, therefore, held that, failure to provide an opportunity to make an effective representation, vitiates the further continuance in detention of the detenu. But, however, an essential distinction has been maintained between the document, which is relied upon by the detaining Authority for forming his subjective satisfaction and a document, which has been placed by the Sponsoring Agency for consideration of the detaining Authority. The Hon'ble Supreme Court, in re (Povanammal Vs. State of Tamil Nadu) reported in (1999) S.C.C. (CrL.) 231 by their majority opinion have brought its fine distinction existing in, between these two types of instances in the following words:-

"However, this Court has maintained a distinction between a document, which has been relied upon by the detaining Authority in the grounds of detention and a document, which finds a mere reference in the grounds of detention. Whereas, the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so, where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an

effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

(Emphasis is purely mine)

13. In the instant case, there were references to both the remand orders as well as the subsequent bail order in the grounds of detention passed by the detaining Authority. While the bail order was a mere reference brought out by the detaining Authority to highlight his apprehension that the accused persons, if enlarged on bail, are likely to indulge in similar kinds of robbery elsewhere, insofar as the remand order is concerned, he has relied upon the same for forming his opinion in passing Detention Orders. The contents of para No.7 of the grounds of detention merely referred to the bail order, in juxtaposition thereto, the contents of para No. 5 of the grounds of detention, unmistakably disclose that the detaining Authority has relied upon the remand orders passed by the learned Magistrate. There is no difficulty for us to arrive at this conclusion, for, the detaining Authority has noticed that, though, at the first instance, the remand orders have been passed on 02.11.2016 and 08.11.2016 in respective cases, the remand was periodically extended, and it was extended lastly upto 08.02.2017 and 16.02.2017. That was the reason, why, the detaining Authority, while considering the material placed for his formation of opinion by the Sponsoring Agency, arrived at the conclusion that the detenus deserve to be preventively detained by passing order under Section 3 (1) of the Act, as there may not be any further extension of the remand order. The detenus were already under judicial custody for more than five months, and the custody was only extended upto 08.02.2017/1, (concerning the detenus I.Mohammed Riswan, ii) B.Loganathan and iii) A.Saleem) and 16.02.2017 (in the case of V.Kannan) and perhaps, the detaining Authority was conscious that, it may be difficult for the State to secure detention of the accused persons from the Court beyond 08.02.2017/16.02.2017. Hence, placing reliance upon the remand orders, the detaining Authority had made up his mind for exercising the power conferred on him under Section 3 of the Act.

14. Therefore, the present are the cases, where, remand orders passed by the learned Magistrate, which stood extended from time to time were relied upon by the Detaining Authority for the purpose of subjective satisfaction for preventively detaining the accused persons. That neat copy of the orders, having not been supplied to the detenus, and one such copy, which has been made available to the detenu, I.Mohammed Riswan, which we had perused at page 204 of the Paper book, we are of

the opinion that the manuscript order is certainly unreadable, as contended by the learned Counsel for the petitioners, and consequently, it has prevented the detenus from making an effective representation against the orders of detention. In other words, right to make effectively a representation against the detention order, as guaranteed under Article 22 (5) of our Constitution has been observed in the breach.

15. In the instant case, based upon the opinion tendered by the Advisory Board, in the case of one of the co-accused, by name R. Muthukrishnan @ Krishnan, the State Government passed orders through their G.O.Rt.No 1369 Home, Prohibition & Excise (XII) Department, dated on 20.03.2017 revoking the order of detention passed by the Commissioner of Police, Coimbatore, against him on 31.03.2017, and set the said R.Muthukrishnan @ Krishnan at liberty, by freeing him from the prison. Though in the instant case, the opinion of the Advisory Board is at variance with that of their opinion in the case of R. Muthu Krishnan, but the opinion of the Advisory Board is not justiciable. Hence, we are of the view that the order passed by the State Government on 20.03.2017 is only a relevant circumstance for considering whether the continuance of further detention of the co-accused is sustainable or not. It does not automatically vitiate their further detention.

16. For the aforementioned reasons, we are of the view that, for the sheer failure to communicate the readable remand orders, which have been relied upon by the detaining Authority for passing the orders of preventive detention, we declare the further continuance of the detention of the detenus as unjust and unsustainable. Hence, we have no hesitation to allow the Habeas Corpus Petitions, and direct the State to set the detenus at liberty forthwith.

17. We also take this opportunity to direct the Registry to communicate the copy of this judgment to the Chief Secretary to the Government, who, in turn, shall communicate the same to all the Officers of the State Government, who can exercise the power under Article 3 of the Act, for preventively detaining any person, for ensuring that any remand order sought to be relied upon by such detaining Authorities be got type written separately and be supplied along with other similar documents, individually and separately. Smudged/Illegible copies of document relied upon be not supplied and instead neat copies, which are legible be made available. If the detenu can not understand the contents thereof, a true translated version thereof be made available. The Chief Secretary would also ensure that such of the material relied upon by the detaining Authorities apart from being supplied in original, a neat translated copy of such material in the language known and understood by the detenu concerned be also supplied, so that,

the exercise carried out under Section 3 of the Act does not fail to pass the scrutiny only on that ground.

18. The Habeas Corpus Petitions stand allowed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu
Fort St. George,
Chennai- 600 009.
2. The Commissioner of Police,
Coimbatore City,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Inspector of Police,
E1,Singanallur Police Station,
Coimbatore City,Coimbatore.
- 5.The Superintendent,Central Prison,Coimbatore.
- 6.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.

+2cc to Mr.Camyales Gandhi Mathi,Advocate sr.43273,43272

+1cc to Mr.A.Thiyagarajan,Advocate sr.43543

copy to:
The Chief Secretary to Government,
Fort St.George,Chennai-9.

H.C.P.Nos. 260, 305, 364 & 381 of 2017

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ss(21/7/2017)