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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

H.C.P. (MD) No.1230 of 2017

and

Cr1.M.P. (MD) No.7729 of 2017

M.Meena

... Petitioner

Vs.

1.State represented by
The Secretary to the Government,
Home Department, George Fort, Chennai.

2.The Commissioner of Police,
Trichy City, Trichy.

3.N.Mayilvahanan
Deputy Commissioner of Police,
Head Quarters, Madurai City,
Formerly Trichy City.

4.The Inspector of Police,
Gandhi Market Police Station,
Trichy City, Trichy.

5.The Superintendent of Police,
Central Prison, Trichy.

...Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the Detention order passed dated 04.07.2017 issued in C.No.20/Detention/C.P.O/T.C/2017 by the second respondent to detain the detenu under Section (2) of the Section 3 of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu S.Manohar @ SVR Manohar, S/o.Saminatha Thevar, aged about 60 years detained at Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.Veera Kathiravan, senior counsel
for M/s.Veera Associates

For Respondents : Mr.C.Rajarathinam, State Public
Prosecutor assisted by
Mr.S.Ramesh,
Additional Public Prosecutor
for RR1,2, 4 & 5
Mr.S.Chellapandian for R3

**O R D E R***********

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

An order of preventive detention is made to prevent the detenu from being a menace to society. The detenu would have come to the adverse notice of the authorities on account of his past conduct. But, it is the "ground case" that leads to passing of an order of preventive detention. Judicial notice can be taken of the fact that in all ground cases, the detenu is accused of having brandished a weapon in a crowded public place and uttering threatening words; the people run helter and skelter; traffic comes to a stand still. The vocabulary employed in all the grounds of detention is stereotyped. The police have a standard template. Perhaps for the first time, the detenu has been able to almost show that the ground case has indeed been "put up".

2. In this writ petition, the petitioner seeks issuance of a writ in the nature of Habeas Corpus calling for the records relating to the detention order dated 04.07.2017 issued in C.No.20/Detention/C.P.O/T.C/2017 by second respondent detaining her husband S.Manohar @ SVR Manohar as a "Goonda" under Tamil Nadu Act 14 of 1982 and for quashing the same.

3. It is the case of the writ petitioner that her husband was doing lottery business when it was legally permissible and that he stopped doing the same following the ban imposed by the Government. He had been engaged in legitimate businesses and that he had recently opened a textile shop. On account of business rivalry, a series of cases were foisted on him. He had gone to Chennai on 18.06.2017 and was staying in Sai Park Lodge at Periyamedu, Chennai. He was picked up by the police team headed by the Inspector of Police, Woraiyur Police Station at about 12.00 noon on 21.06.2017 from the lodge premises. He was taken in a private Scorpio car bearing registration No.TN 09 AH 7479 and brought to Trichirappalli. He was illegally detained in Ponmalai Old Police Station from 08.00 p.m on 21.06.2017. He was falsely shown as having been arrested at 12.00 noon on 22.06.2017 near Uyyankondan river in Woraiyur police station limit with 1.1 k.g of Kanja. Records like arrest memo, confession, seizure of mahazar etc. were fabricated so as to detain the petitioner's husband under Tamil Nadu Act 14 of 1982. He was produced before J.M.No.III, Trichirappalli on 22.06.2017 at about 08.00 p.m with two remand reports so as to remand him in Crime No.832/2017 as well as 897/2017 on the file of Woraiyur Police Station. The Jurisdictional Magistrate for Woraiyur Police Station is Judicial Magistrate, No.IV, Trichirappalli. He was on leave on 22.06.2017. Therefore, the petitioner's husband was produced before the in-charge Judicial Magistrate, No.III. The said Magistrate remanded the petitioner's husband in Crime No.832/2017 at about 08.00 p.m



to judicial custody upto 06.07.2017. When the second cover containing the remand report in Crime No.897/2017 was opened, the Magistrate noted that the offence was under Section 8(c) r/w 20(b) (ii) (B) of NDPS Act as the quantity of ganja was shown as 1.1 kg. Therefore, the said Magistrate declined to remand the petitioner's husband for want of jurisdiction and directed the Investigation Officer to produce him before the Special Court for NDPS Cases at Pudukkottai.

4. Instead of complying with the said direction, the Investigating Officer continued to illegally detain her husband in order to fabricate the records and produce him before J.M.No.V. The quantity of ganja was altered from 1.1 kg to 900 gms. The provisions of law were also accordingly changed to Section 8(c) read with 20(b) (ii) (A) of NDPS Act. The Judicial Magistrate, No.V remanded the petitioner's husband to judicial custody upto 06.07.2017. Thus, the petitioner's husband was remanded to judicial custody in Crime No.832/2017 and 897/2017 on the file of the Woraiyur police station by two different Magistrates namely Judicial Magistrate No.III and Judicial Magistrate, No.V, Trichirappalli within a span of four hours. The petitioner's husband was in the custody of the police from 08.00 a.m on 21.06.2017 and therefore he could not have been involved in the ground case which is said to have been taken place on 21.06.2017 at about 17.00 hrs.

5. According to the writ petitioner, the object of registering successive cases including the ground case was only to detain her husband as a "Goonda". Apprehending the same, son of the the writ petitioner had sent complaints to various authorities including the Home Secretary, Chief Justice of Madras High Court as well as the Commissioner of Police, Trichirappalli who is the detaining authority in this case. One such representation was sent to detaining authority on 27.06.2017. The same was delivered on 29.06.2017. Proof of despatch as well as delivery have been enclosed in the typed set of papers.

6. The detaining authority has filed his counter affidavit denying the allegations made by the writ petitioner.

7. We heard the learned Senior Counsel Shri.Veera Kathiravan appearing for the writ petitioner and the State Public Prosecutor for the respondents 1, 2 and 4.

8. The learned Senior Counsel took us through the entire material on record. He contended that the very arrest and detention of the detenu was illegal. There has been fabrication of records at every stage. This was brought to the attention of the detaining authority. But the said authority chose to ignore such material. He mechanically accepted the request of the detaining authority and passed the impugned order of detention on 04.07.2017. Since relevant and vital material was not

considered by the detaining authority, the detention order stood vitiated by non application of mind.

9. Secondly, the subjective satisfaction expressed by the detaining authority in the impugned order with regard to the need to invoke the power of preventive detention would also not satisfy the parameters laid down in a catena of decisions. The Honourable Supreme Court had repeatedly held that only if there is an imminent possibility of the detenu coming out on bail, the authority can preventively detain him. The satisfaction arrived at by the detaining authority in this case was not based on any legally acceptable material.

10. Lastly, there was a delay in considering the representation sent on behalf of the detenu against the detention order. Therefore, continuance of the detention is illegal. The learned Senior Counsel appearing for the petitioner prayed for quashing the detention order and for directing the detenu to be set at liberty. Even though certain allegations of mala fides have been made against the third respondent, it was neither argued nor pressed. The learned Senior Counsel also did not argue on the issue of compensation that has been raised in the miscellaneous petition.

11. The learned State Public Prosecutor strongly and vehemently denied the allegations of mala fides imputed to the respondents. He contended that the detenu was a notorious lottery baron whose activities had ruined the lives of hundreds of poor people. The detenu was originally based in Virudhunagar. Cases were registered against him right from 2009. There are as many as 49 cases against the detenu. In two cases, the detenu was convicted. One was in the year 2012 and another in the year 2014. He prayed for sustaining the detention order and sought dismissal of the Habeas Corpus Petition.

12. This Habeas Corpus Petition deserves to be allowed on a single short ground. From a perusal of the proforma furnished by the Under Secretary to Government, it can be seen that the representation dated 13.07.2017 was received on 14.07.2017. Remarks were called for on 14.07.2017 and they were received on 20.07.2017. The file was submitted on 24.07.2017 and the Under Secretary and Deputy Secretary dealt with the same on 24.07.2017. The matter was dealt with by the Minister only on 22.08.2017. The rejection letter was prepared on 23.08.2017 and sent on 24.08.2017. There has been a delay of almost 30 days between putting up of the file and consideration by the Minister concerned. There is simply no explanation forthcoming with regard to the said delay.

13. Article 22(5) of the Constitution of India states that the detenu must be afforded the earliest opportunity to make a representation against the detention order. Therefore, the duty



is cast on the authority to consider the representation without any delay. If there is any delay in the matter of consideration of the representation, the same must be explained. If there is no explanation for the delay in considering the representation, detention becomes illegal. This proposition was laid down by the Honourable Supreme Court in **S.K. Abdul Karim Vs. State of West Bengal (1969) 1 SCC 433**. It has been followed in hundreds of decisions. In this case, the delay is apparent. There is no explanation. Therefore, the continued detention of the detenu pursuant to the impugned order becomes illegal.

14. In fact, there is no necessity to go into the other contentions. But, the learned Senior Counsel had questioned the very passing of the detention order. Therefore, this Court is constrained to consider the said contentions also. The writ petitioner has specifically alleged in her affidavit that her husband was staying in Sai Park Lodge at Periyamedu on 21.06.2017 and that the CCTV footage would show that at around 12.00 noon, the police team headed by the Inspector of Police, Woraiyur Police station were present with the detenu in the reception area of the lodge. The detaining authority in his counter affidavit admits this fact. However, he would claim that the police team had gone there in connection with some other confidential matter and that they happened to come across the detenu in the lodge premises. The third respondent would deny that the police party arrested the detenu and brought him with them in a private vehicle from Chennai to Trichy.

15. The fourth respondent namely, the Inspector of Police, Woraiyur Police Station, Trichy admittedly remanded the detenu on 22.06.2017 in Crime No.832/2017. He is the complainant in the said case. The detenu was shown as fourth accused. The F.I.R was registered on 03.06.2017 itself. Therefore, it is impossible to believe that the fourth respondent who was the complainant himself and who was searching for the detenu would have simply seen the detenu on 21.06.2017 at Chennai and left him without arresting him. Section 114 of the Indian Evidence Act, 1872 states that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. This Court is not that gullible to swallow the weak explanation offered by the detaining authority.

16. We have no doubt that there is prima facie material to come to the conclusion that the fourth respondent apprehended the detenu at Chennai on 21.06.2017 at around noon and brought him to Trichy in the private vehicle that had been hired by the police party. The writ petitioner had given details of the manner in which her husband was brought from Chennai to Trichirappalli. If



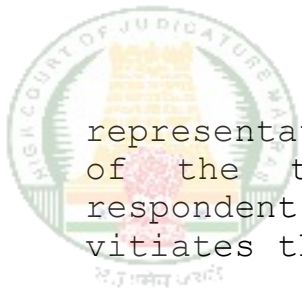
that is true, the detenu could not have been involved in the ground case in Crime No.897/2017. Similarly, he could not have been arrested at 12.00 hrs on 22.06.2017 near Uyyankondan channel. There are also material alterations in the remand report.

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17. It is found that the detenu was produced before the Judicial Magistrate No.3, Trichirappalli on 22.06.2017 with a remand report that he was found with 1.1 kg of kanja. The learned Judicial Magistrate was not inclined to remand him. However, there was no order directing the production of the accused before the learned Judicial Magistrate No.V, Trichirappalli. The police thereafter changed the quantity from 1.1 kg to 900 gms and produced the accused before the learned Judicial Magistrate No.V. There was no endorsement given by the learned Judicial Magistrate No.3 returning the remand report for production before the jurisdictional Magistrate.

18. The learned State Public Prosecutor fairly submitted that there are no entries found in the file as to how the accused was produced before the learned Judicial Magistrate No.5 notwithstanding the fact that he was earlier produced only before the learned Judicial Magistrate No.3 and remand was not permitted. The petitioner is prima facie correct in her contention that the police wanted to put up a false case for possession of kanja and the same is evident by the fact that the quantity was altered as 900 gms, which would be a small quantity.

19. All these aspects have been duly highlighted in the representation sent to the detaining authority. If the detaining authority had taken the same into account, it would have certainly had a bearing on his subjective satisfaction. In **Ayya vs. State of U.P (1989) 1 SCC 374**, it was held that there would be vitiation of the detention on grounds of non application of mind if a piece of evidence which was relevant though not binding had not been considered at all. If a piece of evidence which might reasonably affect the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn vitiates the detention. The detaining authority might very well have come to the same conclusion after considering this material. But, omission to consider the material assumes materiality. In the case before the Honourable Supreme Court, a telegram was sent alleging that the detenu had been arrested prior to the occurrence of the event in question. It was contended by the counsel for the detenu that non consideration of the telegram which had a bearing on the complicity or otherwise of the detenu for the alleged offence would vitiate the detention for non application of mind. The said contention was accepted by the Honourable Supreme Court. In this case, copy of the



representation dated 26.06.2017 which was delivered in the office of the third respondent was not placed before the third respondent. Non consideration of this relevant material vitiates the order of detention and renders it illegal.

20. It is also seen that the adverse cases registered against the writ petitioner's husband are mostly under the Lottery Regulation Act. Of course, some of the offences under IPC have also been included. Even in the detention order, the detaining authority would focus more on the repeated breach of the provisions of Lottery Regulation Act by the detenu. The detaining authority states in the detention order that if the detenu is allowed to come out from prison, he would spoil the lives of poor people by indulging again in selling banned lottery tickets. But, in the very next paragraph, the detaining authority would state that the detenu committed a grave crime in a residential and busy traffic area and that he has created a feeling of insecurity in the minds of the people of the area in which the occurrence took place and thereby acted in a manner prejudicial to the maintenance of public order. It can be thus it seen that the ground case was deliberately introduced to brand the detenu as a "Goonda". If the adverse cases of the detenu show a particular pattern of his conduct, the ground case does not fit in to the said pattern. It stands apart.

21. The detenu has to his credit as many as 49 cases including the 'ground' case. The ground case contained offences under the NDPS Act and yet the detaining authority came to the conclusion that it is very likely that the detenu would come out on bail. A number of bail applications filed by the detenu were pending before the Judicial Magistrate No.1,4 and 5 Trichirappalli. Yet the detaining authority observed that the detenu would come out on bail. This was because according to him, in a similar case in Crime No.129/2016 registered under Section 392 r/w 397, 428 IPC r/w 5 and 7 of Lottery Regulation Act, the accused therein was granted bail. In fact, the said case cannot be said to be similar because there was no offence registered under the NDPS Act. In any event, grant of bail in a similar case cannot be the guiding criteria. What is required is grant of bail for the co-accused in the same case. This was the principle laid down in **Huidrom Konunkao Singh Vs. State of Manipur 2012 (7) SCC 181**. The Honourable Supreme Court specifically laid down the dictum that in the case referred to for arriving at the satisfaction regarding the imminent possibility of the detenu coming out on bail, the co-accused in the same case must have been enlarged on bail. But, admittedly, in the present case, the bail order referred to by the detaining authority did not relate to the co-accused in the same case. Thus, on this ground also, the subjective satisfaction of the detaining authority stands vitiated. Looked at from any angle, the impugned order of detention cannot be allowed to stand.

22. In the result, this habeas corpus petition is allowed. The detention order dated 04.07.2017 issued in C.No.20/Detention/C.P.O/T.C/2017 by the second respondent is quashed. The detenu viz., S.Manohar @ SVR Manohar, S/o.Saminatha Thevar, aged about 60 years is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home Department, George Fort, Chennai.
- 2.The Commissioner of Police, Trichy City, Trichy.
- 3.The Deputy Commissioner of Police,
Head Quarters, Madurai City, Formerly Trichy City.
- 4.The Inspector of Police, Gandhi Market Police Station,
Trichy City, Trichy.
- 5.The Superintendent of Police, Central Prison, Trichy.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.CHELLAPANDIAN, Advocate SR.No.80763

skm

MAS/SV-MMS/SAR2:06.10.2017:8P-8C

Order made in
H.C.P. (MD) No.1230 of 2017
and
CrI.M.P. (MD) No.7729 of 2017

21.09.2017