

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2018

Pronounced on: 04.06.2018

CORAM

THE HON'BLE MR.JUSTICE M. VENUGOPAL
AND

THE HON'BLE MRS.JUSTICE R. HEMALATHA

H.C.P.No.392 of 2018

N.Banumathi ... Petitioner/Wife of the Detenu

-Vs-

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The District Magistrate and District Collector,
Namakkal District.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India for issuance of Writ of Habeas Corpus calling for the records in C.M.P.No.03/Goonda/2018/M1, dated 09.02.2018 passed by the second respondent against the petitioner's husband Nanthakumar Son of Kondappan aged about 39 years, who is presently confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenue and to set him at liberty.

For Petitioner : Mr.A.Saravanan
For M/s.G.Murugendran

For Respondents : Mr.R.Ravichandran
Government Advocate (Crl. Side)

ORDER

Challenge is made to the order of detention passed by the second Respondent, dated 09.02.2018 vide proceedings in C.M.P.No.03/Goonda/2018/M1, whereby, the husband of the petitioner by name K. Nanthakumar, Son of Kondappan, aged 39 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, Slum-grabbers and Video Pirates Act (Tamil Nadu Act 14 of 1982).

2. As per the grounds of order of detention, dated 09.02.2018 passed by the second respondent, the detenu was detained under the aforesaid Act, since a criminal prosecution is initiated against him in Crime No.491 of 2017 of Namagiripettai Police Station for the offences punishable under Section 365, 506(ii), 302 and 201 IPC r/w 3(i) and 3(2) sub clause (v) (a) of SC/ST Prevention of Atrocities Act, 1989. As per the FIR the detenu along with the other accused abducted one Suresh on 24.10.2017 demanding a ransom of Rs.42,000/- and also beat him up with a bamboo stick as a result of which, the victim Suresh died on 28.10.2017. Thereafter, the detenu and the other accused took the body of the deceased in a Scorpio car bearing Registration No.TN-47-K-9217 belonging to the co-accused Dhanasekar and shifted the body into a lorry bearing Registration No.TN-28-AP-0252 near Rayarpalayam and threw away the body in Thimbam Forest on Sathyamangalam-Mysore Road. The detenu was thereafter arrested in the said Crime number.

3. Mr.A. Saravanan, learned counsel representing Mr.G.Murugendran, appearing on behalf of the petitioner contended that the order of detention passed by the second respondent is vitiated for the following grounds:

(i) the unexplained delay of two months between the date of arrest and the passing of detention order has an effect of snapping the live link between the alleged prejudicial activity and the passing of detention order.

(ii) no cogent materials are available before the detaining authority to conclude/apprehend that the detenu is likely to get bail in the ground case.

(iii) there is an abnormal delay in considering the representation submitted by the detenu.

(iv) Non-supply of orders of remand to the detenu would vitiate the order of detention passed by the second respondent.

4. I Ground:

Mr.A. Saravanan, learned counsel appearing for the petitioner contended that since the accused was arrested on 28.11.2017 and the detention order was passed only on 09.02.2018 there is an unexplained delay of two months. Relying on the decision in Chinnappa v. The District Magistrate and District Collector, Tiruvannamalai District and Another reported in (2006) 2 MLJ (Cr1) 988, he would contend that when there is a delay of two months in forwarding papers to the detaining authority for passing the order of detention, such delay has the effect of snapping the link between the prejudicial activity and the passing of detention order.

Per contra, the learned Government Advocate (Criminal Side) would contend that the above said decision would not apply to the facts of the present case since in that case though the chemical analysis report of seized contraband was received on 25.04.2006 the sponsoring authority prepared the special report after a lapse of one month. He would further contend that when a person is detained in the commission of offences under Sections 365 and 302 IPC, the police has to make a thorough investigation into all the facts with a view to determine the identity of all the persons engaged in such crime as the offence which the present detenu committed along with others has a deleterious effect on the maintenance of public order. It is his further contention that such investigation has to be carried out for months together due to the magnitude of operations. Reliance was also placed on the decision in Rajendrakumar Natvarlal Shah v. State of Gujarat and Ors reported in (1988) 3 SCC 153. In the above cited decision, it is clearly laid down that even an unexplained delay in taking action is not inflexible and that the courts should not merely on account of delay in making of an order of detention the assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached and taking of such a view would not be warranted unless the court finds that the grounds are 'stale' or illusory or that there is no real nexus between the grounds and the impugned order of detention. The Hon'ble Supreme Court has referred the decision in Odut Ali Miah v. State of West Bengal, reported in (1988) 3 SCC 164, wherein, it has been held that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. It is to be pointed out that in the instant case, what is recovered is a skeleton of the deceased and the police had to take some time for investigating the case. In fact, the postmortem certificate was received only on 16.12.2017 and the delay has been properly explained by the prosecution to the satisfaction of this Court and therefore this ground fails.

5. II Ground:

Mr.A. Saravanan, learned counsel appearing for the petitioner would contend that the second respondent has not applied his mind while coming to the conclusion that the detenu is likely to come out on bail as the detenu has not moved any bail application subsequent to the dismissal of his first bail application by the learned Principal Sessions Judge, Namakkal. Reliance was placed on the decision in G. Jaya v. The Secretary to Government, Co-operation, Food and Consumer Protection Department, reported in (2012) (2) MWN (Cr.) 329 (DB), wherein

it has been held thus:

"Yet another infirmity and illegality as rightly pointed out by the learned Counsel for the petitioner is to the effect that even in the similar case as stated by the Detaining Authority at para 5 of the grounds of detention, wherein the accused by name Nagaraj was granted bail, the perusal of the said order as enclosed along with the Booklet served on the detenu reveals that the said bail order was granted mainly on the ground of illness as well as on the ground that the investigation was over and as such, on the basis of such order, by no stretch of imagination it could be stated that the case of the detenu is so similar as that of the other Accused who has been granted bail. We have already pointed out that the Detaining Authority has not furnished any further details regarding the exact allegation leveled against the said accused and the quantum of the contraband seized from him. This factor reflects the total non-application of mind of the Detaining Authority and we have no hesitation to hold that the Detaining Authority has passed the detention order mechanically and arbitrarily without any basis whatsoever and without any cogent materials available on record to arrive at the subjective satisfaction and come to the conclusion that the detenu is very likely to come out on bail and in such event, he would indulge in such further activities which would be prejudicial to the maintenance of supplies of commodities essential to the community".

6. Per contra, the learned Government Advocate (Criminal Side) contended that the facts of the present case are entirely different from the above cited decision since the order of detention has been passed on cogent and sufficient materials and also by taking into account the totality of the circumstances. His specific contention is that there is no reason to doubt the subjective satisfaction arrived by the second respondent for issuance of impugned detention order in the facts situation of the present case.

7. It is to be pointed out that even according to the petitioner's counsel, the co-accused have been released on bail which is a good ground for the detaining authority to come to a conclusion that there is an imminent danger of the detenu herein to come out on bail. However, the detaining authority has not mentioned this, in his order of detention. In any event, the detaining authority had referred the Crime No.190 of 2017 of Kumarapalayam Police Station, registered under Section 147, 302 IPC and had stated that the accused who is similarly placed as that of the present detenu has been enlarged on bail by this Court. A perusal of the detention order passed by the second respondent shows that he has considered the orders passed in Crime No.190 of 2017 of Kumarapalayam Police Station and it

cannot be said that the second respondent has not applied his mind. At this juncture, the learned counsel appearing for the petitioner would contend that when the co-accused, who were released on bail have not been detained under the Goondas Act and the sponsoring authority cannot be selective in branding the petitioner alone as a "Goonda". Per contra, the learned Government Advocate (Criminal Side) would contend that the present petitioner was not only instrumental in commission of the offence but also executed the same. It is trite law that the benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality enshrined in Article 14 of the Constitution. There cannot be equality among illegality. Furthermore, it is not also the case of the petitioner that the second respondent passed the impugned order with an oblique motive against the petitioners alone leaving the other accused. Therefore, this ground also fails.

8. III Ground:

The detenu submitted two representations dated 21.02.2018 and 13.03.2018 and the rejection orders were passed on 19.03.2018 and 10.04.2018. The learned counsel appearing for the detenu would contend that there is a delay of 16 days and 11 days respectively in considering the representation submitted by the detenu. Reliance was placed on the decision in C. Muthuvali v. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai-600 009, reported in [(2017) (1) MWN (Cr.) 270 (DB)] in which, it has been held that an unexplained delay of 9 working days on the part of the Government in considering the representation rendered the decision illegal. Another Division Bench of this Court in Samaiah v. The Secretary to Government, reported in [(2007) (4) MWN (Cr.) 145], has held that the unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order. Applying the said principles as laid down by the Division Bench of this Court, unexplained delay in considering the representation would definitely affect the order of detention passed by the second respondent. Therefore, on this ground the order of detention is liable to be set aside.

9. IV Ground:

As far as this ground is concerned since the order of remand is not the only document relied upon by the second respondent for arriving at the subjective satisfaction, failure to furnish a copy thereof to the detenu would not vitiate the order of detention passed by the detaining authority. In fact, the detenu has moved a bail application before the concerned court immediately after his remand to judicial custody and therefore, non-supply of a copy of the remand order cannot be said to have caused prejudice to the detenu. Therefore, this

ground also fails.

10. In any event, it is pertinent to point out that the Full Bench of this High Court in Arumugam v. State of Tamil Nadu, reported in [(2011) (iv) CTC 353] has held thus:

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

11. In the instant case, except the solitary ground case in Crime No.491 of 2017 there is no other case filed/pending against the detenu. This solitary case also does not have the propensity of affecting the public order. An act may be gruesome but whether it warrants a preventive detention when the common law of the land is sufficient to deal with the situation is to be considered.

12. A Larger Bench of the Hon'ble Supreme Court in Rekha v. State of Tamil Nadu, reported in [(2011) 3 MLJ (Cr1) 4222] held thus, "preventive detention is by nature repugnant to democratic ideas and an anathema to the Rule of Law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code) and other penal statutory can deal with a situation, recourse to a preventive detention law will be illegal".

13. In view of the judgment of the Full Bench of this Court in Arumugam v. State of Tamil Nadu, reported in [(2011) (iv) CTC 353], (cited supra) the detention order passed by the second respondent is liable to be set aside.

14. Accordingly, H.C.P.No.392 of 2018 is allowed and the order of detention passed by the second respondent dated 09.02.2018 in C.M.P.No.03/Goonda/2018/M1 is quashed. The detenu is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. It is also made clear that this order will not affect the criminal case pending against him.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

msm

To:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Magistrate and District Collector,
Namakkal District.
3. The Public Prosecutor,
High Court of Madras, Chennai.
4. The Superintendent
Central Prison, Salem.
5. The Joint Secretary
Law and Order
St. Fort. George
Chennai 9.

+1 CC to M/s. G. Murugendran, Advocate sr 34601

H.C.P.No.392 of 2018

RJI (CO)
SP(06/06/2018)