

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.10.2019

Date of Verdict: 06.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1507 of 2019

Sayan ... Petitioner/ Detenue

-vs-

- 1.The District Magistrate & District Collector,
The Nilgris District, Collector's Office,
Udhagamandalam - 643 001.
- 2.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 3.The Chairman, Advisory Board,
No.32,Rajaji Salai,
Singaravelar Maligai,
Ground Floor (Back side entrance)
Chennai Collectorate Campus,
Chennai - 600 001. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the first respondent dated 21.03.2019 in Cr.M.P.No.01 of 2019 against the petitioner (Thiru.Sayan, S/o.Velu aged about 37 years) presently confined at Central Prison, Coimbatore and set aside the same and consequently direct the respondents to produce the petitioner before this Court and set him at liberty.

For Petitioner : Mr.G.Prabhakarn
for Mr.E.Raj Thilak

For Respondents Mr.A.Natarajan, Public
Prosecutor
Assisted by
: Mr.R.Prathap Kumar, APP
Mr.M.Mohamed Muzammil,
Government Advocate

ORDER

M.M.SUNDRESH, J.

Seeking to quash the detention order dated 21.03.2019 passed by the first respondent in Cr.M.P.No.01/2019, invoking the provisions of Tamil Nadu Act 14 of 1982, the present habeas corpus petition has been filed.

2. There are two adverse cases in which the petitioner is stated to have been involved. The first case has been registered in Crime No.158 of 2017 dated 24.04.2017 for the offence punishable under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 r/w 397 and 396 IPC and or 302 r/w 120(B) from 324, 342, 449 and 396 IPC. This case involves an offence of dacoity-cum-murder. The occurrence took place inside the residential building - Kodanadu Bungalow.

3. The second case has been registered in the State of Kerala, Palakkad District by the Palakkad Traffic Police Station in Crime No.425 of 2017 for the offence punishable under Sections 279 and 304 (A) IPC. The petitioner was the driver of the vehicle which was involved in the accident. His wife and minor child died, while he was injured.

4. The ground case has been registered in Crime No.63 of 2019 on the file of B1 Udhagamandalam Town Central Police Station for the offence punishable under Sections 447, 506 (i) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The allegation against the petitioner in this case is that he threatened a witness. The petitioner made certain remarks against the Honourable Chief Minister of Tamil Nadu having the effect of implicating him in the offence committed in Crime No.158 of 2017. This resulted in filing another F.I.R. in Crime No.21 of 2019 on the file of Central Crime Branch, Chennai on

11.01.2019 which has been stayed by this Court in Crl.M.P.No.2003 of 2019.

5.In the detention order passed, while reiterating the two adverse cases, the ground case has also been indicated. The detention order proceeds to state that in respect of Crime No.63 of 2019, the petitioner has not filed any bail application. However, the detaining authority viz., the first respondent presumed that there is a real possibility of the detenu coming out on bail by filing a bail application before the appropriate court. If he is released on bail, he would indulge in such further activities in future, which would be prejudicial to the maintenance of public order and peace.

6.Along with detention order, the grounds have been served. The petitioner was also furnished with documents relied upon by the detaining authority. Challenging the detention order passed, this petition is before us.

7.Learned counsel appearing for the petitioner submitted that there is non-application of mind which could be seen from the detention order passed. The detaining authority has affixed her seal in all the pages indicating that the documents in Tamil and Malayalam have been read over to the petitioner, which is inclusive of the documents in Malayalam as well. The documents in the booklet were read over on 23.03.2019. However, in all the pages running to 409, the time has been fixed uniformly as 16.40 hours. The page numbers from 30 to 38, 41 to 47, 133, 134, 314 to 320, 322 to 327, 330 to 333, 339 to 350 and 408 are illegible and could not be read. The second adverse case is only for the offence punishable under Sections 279 and 304 (A) IPC. This case is only accident case and therefore, there is no question of disturbance to public peace. The adverse case relied upon involves the occurrence in the year 2017. There is delay in passing the detention order. The ground case has been registered in Crime No.63 of 2019 on 01.02.2019 whereas the detention order has been passed on 21.03.2019.

8.It is further submitted that there are discrepancies in page No.12 at para 5 and Page No.13 at para 6 which are extracted hereunder:

I am aware that Thiru.Sayan (Aged 37), S/o.Velu residing at Kunnakkampalli Veedu, Edakkulam Post, Irunjalakuda, Thrissur District, Kerala State now at Door No.11/211, Subramaniyar Kovil Street, Madukkarai Market, Coimbatore District is under judicial remand and confined at

Central Prison, Coimbatore in connection with the case in The Nilgiris District B1 Udthagamandalam Town Central Police Station Crime No.63 of 2019 under Sections 447, 506(i) Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

Thiru.Sayan (Aged 37), S/o.Velu residing at Kunnakkampalli Veedu, Edakkulam Post, Irunjalakuda, Thrissur District, Kerala State now at Door No.11/211, Subramaniyar Kovil Street, Madukkarai Market, Coimbatore District is informed that the detention order shall not remain in force for more than 12 days making thereof unless in the meantime, it has been approved by the State Government.

9. On behalf of the petitioner/detenu, it is contended that this discrepancy has occurred for the reason that the petitioner has been detained under judicial custody. Therefore, the statement made in para 6 that he resides outside is incorrect. The detention order has been passed only pursuant to the statement made to the press by the petitioner and therefore, there is no bona fide involved. Thus, it has been passed on extraneous consideration at the instigation of the persons at the helm of affairs. The bail granted to the petitioner in Crime No.158 of 2017 was cancelled. Though the petitioner has filed the second application, the particulars surrounding have not been furnished. The order of remand in Crime No.63 of 2019 has not been served in the language known to the petitioner. There is no basis for coming to the subjective satisfaction since in the ground case, the petitioner has not filed any bail application. There is no material to hold that he is taking steps to come out on bail. Thus, the learned counsel submitted that the detention order is liable to be quashed.

10. In support of his submission, learned counsel appearing for the petitioner relied on the following decisions:

- (i) Hadibandhu Das Vs. District Magistrate, Cuttack and Another ((1969) 1 SCR 227)
- (ii) Kamla Kanyalal Krushalani Vs. State of Maharashtra and Another ((1981) 1 SCC 748)
- (iii) Kannamma Vs. State of Tamil Nadu (1993 2 MWN (Cr1.) Mad 190)
- (iv) T.V.Sravanan @ S.A.R.Prasanna Venkatachaariar Chaturvedi Vs. State through

Secretary and Another ((2006) 2 SCC 664)

(v) Saeed Zakir Hussain Malik Vs. State of Maharashtra and Others ((2012) 8 SCC 233)

11. In Hadibandhu Das Vs. District Magistrate, Cuttack and Another ((1969) 1 SCR 227), it has been held as under:

5. This Court in Harikisan v. State of Maharashtra, 1962 Supp (2) SCR 918 held that where a "detenu is served with the order of detention and the grounds in English and the detenu does not know English and his request for translation of the grounds in a language which he understood was refused on the ground that the order and the grounds had been orally translated to him at the time when the order was served upon him," the guarantee under Article 22 (5) of the Constitution was violated and the detention of the detenu was illegal. It was observed by this Court at p. 924 (of SCR).

"... Cl. (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him.

Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenu would not amount to communicating the grounds. Communication, in this context must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based....."

12. In *Kamla Kanyalal Krushalani Vs. State of Maharashtra and Another* ((1981) 1 SCC 748), it has been held as under:

4. The Court, therefore, clearly held that the documents and materials relied upon in the order of detention formed an integral part of the grounds and must be supplied to the detenu *pari passu* the grounds of detention. If the documents and materials are supplied later, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. In this case, the court relied upon the ratio in *Icchu Devi Chorarias* case (*supra*) extracted above. We find ourselves in complete agreement with the view expressed by the two decisions of this Court and we are unable to accede to the prayer of Mr. Rana for sending the case for reconsideration to a larger Bench. This Court has invariably laid down that before an order of detention can be supported, the constitutional safeguards must be strictly observed.

5. This Court in *Maneka Gandhi v. Union of India* (1978) 2 SCR 621 has widened the horizon of Art. 21 and added new dimensions to various features of and concept of liberty enshrined in Art. 21. In view of the decision in the aforesaid case Art. 22 (5) of the Constitution assumes a new complexion and has to be construed liberally and meaningfully so as to permit the legislature to impose the minimum possible curbs on the precious rights of a citizen, by virtue of preventive detention. If a procedure under Art. 21 has to be reasonable, fair and just, then the words effective representation appearing in Art. 22(5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the detaining authority in his representation. If the words effective representation are interpreted in an artificial or fanciful manner, then it would defeat the very object not only of Art. 22 (5) but also of Art. 21 of the Constitution.

13. In *Kannamma Vs. State of Tamil Nadu* (1993 2 MWN (Cr1.) Mad 190), this Court has held as under:

6. The ratio laid down by the Supreme Court

Squarely applies to the facts of the present case. In the instance case, admittedly, we and the copies of documents supplied to the detenu and in turn relied on by the detaining authority were not legible. This in opt view deprives the detenu in taking an effective representation and as such infringes the detenu's 'right under Article 22(5) of the Constitution. On this ground alone, the impugned order is therefore liable to be quashed.

14. In T.V.Sravanan @ S.A.R.Prasanna Venkatachaariar Chaturvedi Vs. State through Secretary and Another ((2006) 2 SCC 664), the following paragraphs would be apposite:

9. In Kamarunnissa vs. Union of India and another : (1991) 1 scc 128 this Court observed:-

"13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court."

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12. The order of detention itself notices the fact that the appellant had moved an application for grant of bail before the Principal Sessions Court which was rejected on November 17, 2004. The appellant had moved another bail application before the High Court which was withdrawn on December 3, 2004. The detaining authority noticed that the appellant had not moved any bail application subsequently but it went on to state that there was imminent possibility of appellant's coming out on bail by filing another bail application before the Sessions Court or the High Court since in similar cases bails are granted by the Sessions Court after a lapse of time. The

order of detention was passed on December 15, 2004 i.e. merely 12 days after the dismissal of the bail application by the High Court. There is nothing on record to show that the appellant had made any preparation for filing a bail application, or that another bail application had actually been filed by him which was likely to come up for hearing in due course.

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14. We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the Courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated December 13, 2005.

15. In Saeed Zakir Hussain Malik Vs. State of Maharashtra and Others ((2012) 8 SCC 233), it has been held as under:

16. In Lakshman Khatik vs. The State of West Bengal, (1974) 4 scc 1, a three-Judge Bench of this Court, while considering the detention order under the Maintenance of Internal Security Act, 1971 has concluded that prompt action in such matters should be taken as soon as the incident like those which are referred to in the grounds have taken place. In the said decision, it was pointed out that all the three grounds on which the District Magistrate purports to have reached the required satisfaction are based on incidents which took place in rapid succession in the month

of August, 1971. The first incident of unloading five bags of rice took place in the afternoon of August 3, 1971. The second incident took place on August 5, 1971 also in the afternoon practically at the same place as the first incident. This time also some rice was removed from the trucks carrying rice. The third incident took place in the afternoon of August 20, 1971 also at the same place. That also related to the removal of some rice from loaded trucks. In this factual scenario, this Court concluded that the District Magistrate could not have been possibly satisfied about the need for detention on March 22, 1972 having regard to the detenu's conduct some seven months earlier. The following conclusion is very relevant.

"5....Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. In our opinion, the order of detention is invalid."

17. In T.V. Abdul Rahman vs. State of Kerala and Others, (1989) 4 SCC 741, in similar circumstance, this Court held:

"10.....The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of

detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

After holding so, this Court quashed the order of detention.

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27. As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the

passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

16. Learned Public Prosecutor appearing for the State has submitted that the cases in which the petitioner is involved are to be seen while considering the reasons for quashing the detention order. Apart from involving in the offence punishable under Section 302 IPC, the petitioner has made derogative statement against the Honourable Chief Minister. Though the complaint registered in this regard has not been taken note of by the detaining authority, the said statement created ripples throughout the State. He has also threatened the witness. Therefore, on the aforesaid background, the contentions will have to be considered.

17. It is further submitted that the contents of the documents were read over to the petitioner through a translator in Malayalam. The said contentions raised are not substantially affecting the detention order as there are sufficient materials to arrive at subjective satisfaction. The petitioner has not even made any representation after the passing of the detention order. The bail granted in favour of the petitioner in Crime No.158 of 2017 has been cancelled. Further bail application filed by him was also dismissed by this Court. Therefore, this writ petition will have to be dismissed.

18. We have heard the learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondents.

19. We have perused the documents in the booklet. We find that many number of the pages were illegible such as one found in page Nos.45, 46, 320, 325, 330, 331, 332, 333, 334, 344 and 350 etc., Based on the very same ground, number of detention orders have been quashed by this Court. Though it is contended that the contents of the documents have been read over, it appears that even the documents in Malayalam are also stated to have been read over. The illegible copies also include documents in Malayalam. When they were furnished to the petitioner, they should be legible enough to read. That is the very object of furnishing the copies of the documents relied upon. In almost all the other cases, translated versions of the

documents are given. Now, a different procedure is adopted in petitioner's case. Therefore, on these grounds, the impugned detention order is liable to be set aside.

20. Much has been said about one of the adverse cases in Crime No.425 of 2017 on the file of the Palakkad Police Station. This is an accident case in which the petitioner's wife and child died while he was injured. The detaining authority ought not to have relied upon this to arrive at the subjective satisfaction. There is no possibility of such an offence being re-occurring leading to disturbance of public order and peace. After all, the persons died are the wife and child of the petitioner.

21. In the first adverse case, the case has been registered on 24.04.2017. This happened in a private place. This was also nearly two years before the detention order. As on today, the bail granted was also cancelled. In the ground case registered in Crime No.63 of 2019, the sum and substance of the prosecution case is that the petitioner threatened the witness. Admittedly, in this case, no application has been filed for enlargement on bail. There is not even a statement to the effect that the petitioner or his relatives are making any attempt to file such an application. Therefore, even here also, we do not find requisite factors in existence viz., imminent and real possibility of the petitioner coming out on bail and likely to act prejudicial to the maintenance of public order and peace.

22. Though it is submitted by the learned Public Prosecutor that the interview given by the petitioner is not the reason for the detention order and the case registered on 02.01.2019 has not been taken note of either as an adverse case or ground case, in paragraphs 3 and 17 of the counter affidavit filed, one could see the underlying reason behind the passing of the detention order. The petitioner did give an interview to a News Channel making certain allegations against the Honourable Chief Minister. It is important to note that the detention order was passed after the remarks made by the petitioner against the Honourable Chief Minister.

23. On the other contention with respect to delay in passing the detention order, we are not willing to go into the same. However, we note the fact that the case has been registered in Crime No 63 of 2019 on 01.02.2019 whereas the detention order was passed on 21.03.2019 though it is submitted by the learned Public Prosecutor that the arrest was made only on 04.03.2019. We may note that the alleged occurrence was between 31.01.2019 and 15.02.2019.

24.In the light of the above said discussion, we find that the impugned detention order suffers from non-application of mind among other reasons. Thus, we have no hesitation in setting aside the same. Accordingly, the detention order is set aside. We do find that the abovesaid judgments relied on by the learned counsel appearing for the petitioner support and substantiate the conclusion arrived at.

25.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.01 of 2019 dated 21.03.2019, passed by the second respondent is set aside. The detenu, namely, Sayan, S/o.Velu aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Magistrate & District Collector,
The Nilgris District, Collector's Office,
Udhagamandalam - 643 001.
- 2.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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Chennai - 600 001.
- 4.The Superintendent of Central Prison,Coimbatore
- 5.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.

+1 cc to Public Prosecutor, Sr.No.92158

H.C.P. No. 1507 of 2019

A.SK(04/12/2019)