In the High Court of Judicature at Madras

Dated: 29/04/2004

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.R.SINGHARAVELU

Habeas Corpus Petition NO.198 of 2004

Murugan (a) Senthilvel (a) Kumar ..Petitioner

-Vs-

1.The District Collector & District
Magistrate, Kanyakumari Dist.,
at Nagercoil.

2.State of Tamilnadu rep.by its
Secretary to the Government
Prohibition & Excise Dept.,
Fort.St.George, Chennai-9. ..Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Shanmugavelayutham

For Respondents : Mr.A.Navaneethakrishnan, APP

:O R D E R

S.R.SINGHARAVELU,J
One Murugan (a) Senthilvel (a) Kumar was detained under the Tamilnadu Act 14 of 1982 after branding him as a goonda by an order dated 19.8.2003 by the District Collector, Kanyakumari District at Nagercoil in order to prevent him from indulging in any activities prejudicial to the maintenance of public order and public peace.

2. Besides three adverse cases, a ground case was filed against the detenu. The date of occurrence of the ground case is 15.5.2003. All the cases were filed for the offences under the Indian Penal code. While the first adverse case was filed under Section 392 of the Indian Penal Code, the second adverse case was under Sections 395 and 342 of the Indian Penal Code and under Section 25(1)(b) of the Indian Arms Act read with Section 34 of the Indian Penal Code. The third adverse case and the ground case were filed for the offences under Section 302 of the Indian Penal Code. Both the latter cases are said to be in the same transaction although the place of occurrence

was shown to be different. The time of occurrence in the third adverse case was 5.45 PM whereas in the ground case it was at 6 PM and there was an interval of small distance and time. A careful reading of the facts of two incidents may go to show that they constituted the same transaction in a continuous and series of acts.

3. Learned counsel for the detenu submitted that leaving alone the ground case and the third adverse case, which were acts in continuity on the same day, what remained are only two adverse cases, the occurrences of which, had happened in June and August 1998 whereas the ground case was of the year 2003. Thus, there is an interval of five years between the two adverse cases and the remaining other cases. By relying upon this, it was contended that there is no proximity in between the ground case and the adverse cases and the link between the prejudicial activities and the order of detention, thus, got snapped away.

4. In this connection, reliance was placed upon the judgments in the case of T.A.Abdul Rahman Vs. State of Kerala (1990 SCC (Crl) 76) and in the case of Pedda Narayana Vs. State of A.P. (1975 SCC (Crl) 425).

5. In the latter case i.e. 1975 SCC (Crl) 425 (supra), the order of detention was made on 24.8.1972 whereas the last incident, namely the ground case was shown to have taken place on 15.1.1972. The detenu was not arrested until February 22, 1973. Thus, there was a delay in both the stages and it was held that such a delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority. It was further held that if there was proper application of mind to the materials before him, the detaining authority would have acted with greater promptitude both in making the order of detention and in securing the arrest of the petitioner. It was also cautiously mentioned that it is not as if there was no subjective satisfaction in all cases of delay of this nature and that each case must depend upon its own peculiar facts and circumstances. The final decision that was arrived was to the effect that the detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.
6. In the former case law i.e 1990 SCC (Crl) 76 (supra), the order of detention was passed on 7.10.1987 and the detenu was arrested only on 1.1.1988. There was an explanation made by the State stating that the Investigating Officer had to question a number of persons and to conduct extensive search of various premises in different places in connection with the information gathered during interrogation, etc. It was held in the circumstances of the said case that the detaining authority failed to explain the long delay in securing the arrest of the detenu after three months from the date of passing the order of detention and this non explanation throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the order of detention.

7. Regarding the proximity, it was held in the former case that the question as to 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 upon the facts and circumstances of each case and no hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines could be laid down in that behalf. It is not also as if the test of proximity is a rigid or mechanical test by merely counting number of months between the offending act and the order of detention. It was further held that it is the duty of the Court to scrutinise as to whether the detaining authority has satisfactorily examined the long delay between the prejudicial activities and the passing of the order of detention and afforded a tenable and reasonable explanation as to why such a delay had occasioned and the Court has to further investigate as to whether the casual connection between the prejudicial activity and the order of detention has been broken in the circumstances of each particular case.

8. Apart from the above case laws cited by the learned counsel for the detenu, learned Additional Public Prosecutor had also relied upon the judgment in the case of Kamlabai Kalicharan Yadav Vs. State of Maharashtra (2001 Crl LJ 452) wherein also it was found at paragraph 9 that the Apex Court in Golam Hussain (a) Gama Vs. Commissioner of Police, Calcutta (1974 Crl.LJ 938) pointing out that no mechanical test on the counting months of interval is sound, but it all depends on the nature of acts relied upon, grave and determined or less serious and corrigible, on the length of the gap short or long and the reason for delay in taking preventive action, like information of participation being available only in the course of investigation.

9. What is deducible from all the case laws cited on both sides is that there should be a link between the prejudicial activity and the order of detention and if there is a gap or delay in the activities of investigation, then, such a gap or delay should be explained in order to get convinced about the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was really and genuinely satisfied as regards the compelling necessity to pass the order of preventive detention.
10. In this case, the occurrence had taken place on 15.5.2003. The arrest of the detenu was made on 16.6.2003. He was found to have been remanded on 18.6.2003. In the meantime, every part of the investigation was completed including the receipt of report of the chemical analysis that was actually received on 17.6.2003 itself. The detention order was passed only on 19.8.2003. When everything was completed on 1 7.6.2003, it is not known as to how the State had explained the delay in passing the order of detention only on 19.8.2003. Unless and until any act of the investigating agency is pointed out, we cannot say that there is an explanation, much less satisfactory explanation, for the failure to pass the order of detention till 19.8.2003.

11. In this connection, we would say that the order of detention does not depend upon the whims and fancies of the authority that should pass such an order; but, that would only upon the prejudicial activities, the reason being that the object of passing an order of detention itself is to prevent the detenu from further indulging in any activities prejudicial to the maintenance of public order and public health. Therefore, when once the investigation and every connected work are completed on 17.6.2003, it is not

known as to why the authority was keeping quiet and what factor that was expected to make an order of detention.

12. If such a free lever is given in the hands of the Executive to be used carelessly or to be used according to their own will and pleasure, then, it will ultimately deteriorate the rights and liberties of the individuals. In fact, in very many cases, it has been consistently held that the preventive detention is a serious thing affecting the liberties of the individuals and that the usage of the same should be only by meticulously adopting the procedural inbuilt and by following the safeguards provided therefor. Not only when such safeguards are not properly followed, but also when the link between the prejudicial activities and the order of detention is found snapped without being explained to delink it properly, then, the order would automatically get vitiated. In this case, we have already found that there is no satisfactory explanation in order to make out a link that was otherwise found to have been snapped for the reasons mentioned supra.

13. Learned counsel further submitted that in order to attract Section 2(f) of the Tamilnadu Act 14 of 1982 and in order to clamp an order of detention by branding an individual as a goonda, the ingredients of the above section should be scrupulously followed. Section 2(f) of the Tamilnadu Act 14 of 1982 reads as follows :

"Goonda means a person who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act 45 of 1 860)."

14. Learned counsel further submitted that in this case, there is no habituality found on the part of the detenu in the commission of the offences.

15. Learned Additional Public Prosecutor pointed out that what Section 2(f) of the Tamilnadu Act 14 of 1982 states is that a goonda means a person, who ....(i) habitually commits, (ii) or attempts to commit, (iii) or abets the commission of offences... This is not the correct interpretation of the above said provision. A whole reading of the said section would show that the word 'habitually' would qualify (i) commits, (ii) attempts to commit, and (iii) abets the commission of offences. This should be the correct reading. Unfortunately, a comma (,) after the word 'habitually', is missing in the statute. But, even otherwise, a reading of the said section would show that the word ' habitually' would necessarily qualify the other words 'commits, attempts to commit, and abets the commission of the offences.' Thus, the habituality is the essential ingredient and sine quanon in order to make out a case under Section 2(f) of the Tamilnadu Act 14 of 1982.

16. Learned counsel submitted that this habituality of commission of offences was significantly silent in the order of detention.

17. Again, we have to say as to what is habituality. The Apex Court had an occasion to consider the definition of the word 'goonda' in an earlier case in Vijayanarain Singh Vs. State of Bihar (AIR 1984 SC 1 334) wherein it was held as follows :

"The expression 'habitually' means 'repeatedly' or 'persistently'. It

implies a thread of continuity stringing together
similar repetitive acts. Repeated, persistent and similar, but not isolated,
individual and dissimilar acts are necessary to justify an inference of habit.
IT connotes frequent commission of acts or omissions of the same kind referred
to in each of the said sub-clauses or an aggregate of similar acts or
omissions."

18. It was also held in the case of Kumari Vs. State of Tamilnadu (1
988 LW (Crl) 117) as follows :
"In our view, merely stating that the detenu has committed offences
and they are being investigated is not sufficient to hold that he habitually
commits offences. Something more is necessary, and that may be proof of
convictions or something else."

19. Thus, the expression 'habitually' means repeatedly or
persistently. Further, it implies continuity of similar repetitive acts.
Only in cases where the detenu repeated persistently in similar acts, a habit
can be inferred from the aggregate similar acts or omissions and he can be
termed as a habitual criminal so as to attract the definition of goonda.

20. It was held in the case of Vijay Narain Singh Vs. State of Bihar
(1984 SCC (Crl) 361) as follows :
"The expression 'habitually' means 'repeatedly' or 'persistently'. It
implies a thread of continuity stringing together
similar repetitive acts. Repeated, persistent and similar, but not isolated,
individual and dissimilar acts are necessary to justify an inference of habit.
It connotes frequent commission of acts or omissions of the same kind referred
to in each of the said sub.clauses or an aggregate of similar acts or
omissions....
A single act or omission falling under sub.clause (i) and a single act
or omission falling under sub.clause (iv) of Section 2(d) cannot, therefore,
be characterised as a habitual act or omission referred to in either of them.
Because the idea of 'habit' involves an element of persistence and a tendency
to repeat the acts or omissions of the same class or kind, if the acts or
omissions in question are not of the same kind or even if they are of the same
kind when they are committed with a long interval of time between them they
cannot be treated as habitual ones."

21. While the acts of doing frequently are to be called as the acts
of repetition instead of the acts of redoing, what should be available is the
time track of the said acts. That is to mean not only the frequency, but also
uniformly frequent acts. But, in this case, the first two adverse cases may
be said to have been committed with such uniform frequency, because the first
adverse case is dated 15.6.1998 and the second adverse case is dated
12.8.1998. In order to attract the habitual commission of offences, the other
cases including the ground case should have been committed with such uniform
interval of time and not with such a long gap of five years as found in this
case. This gap would again snap the applicability of the term 'habitually' in
order to attract Section 2(f) of the Tamilnadu Act 14 of 1982. After
delinking the first and second adverse cases, what is remaining is only one
act, as we have already found that the last adverse case and the ground case

are of the same transaction and the occurrence of which was found on the same date and time with an interval of only 15 minutes.

22. This makes us to conclude that the last adverse case and the ground case have a solitary instance, upon which, the order of detention was clamped against the detenu. It was repeatedly held that there should be material on record to show that the reach and potentiality of the single incident was so great as to disturb even the tempo or normal life of the community in the locality or to disturb the general peace and tranquility or create a sense of alarm and insecurity in the locality. Mere words in the nature of ritual in the order of detention may not be sufficient. In fact, in the case of Darpan Kr.Sharma Vs. State of Tamilnadu (2003 II SCC 313), it was held that the solitary instance of robbery was not relevant for sustaining the order of detention. For the above reasons, the order of detention gets vitiated.

23. Accordingly, the impugned order of detention is set aside and the habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith unless his detention is otherwise required in connection with any other cause.

Index : Yes
Internet : Yes

To

1.The District Collector & District Magistrate, Kanyakumari Dist., at Nagercoil.

2.The Secretary to the Government of Tamilnadu, Prohibition & Excise Dept., Fort.St.George, Chennai-9.

3.The Joint Secretary, Public (Law & Order) Dept., Fort.St.George, Madras-9.

4.The Superintendent, Central Prison, Palayamkottai.

5.The Public Prosecutor, High Court, Madras.

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