

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31/08/2004

Coram

The Hon'ble Mr.Justice P.SATHASIVAM
and
The Hon'ble Mr.Justice M.CHOCKALINGAM

HABEAS CORPUS PETITION NO. 516 OF 2004

R.Raji ... Petitioner

-Vs-

1. The Government of Tamil Nadu
Represented by Secretary to Government
Prohibition and Excise Department
Fort St. George
Madras - 600 009

2. The Commissioner of Police
Greater Chennai
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Habeas Corpus, directing to produce the records of the second respondent pertaining to the detention order made in Memo No.40/2004 dated 31.3.2004 in detaining the detenu Ravi alias Yasin under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the said detenu, namely, Ravi alias Yasin, confined at Central Prison, Chennai, before this Court and set him at liberty.

!For Petitioner : Ms.R.Subadra Devi

^For respondents : Mr.Abudu Kumar Rajarathinam
Government Advocate (Criminal Side)

:O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The wife of the detenu has filed this petition challenging the order of detention dated 31.3.2004 in and by which the detaining authority has detained her husband by name Ravi alias Yasin as Goonda under the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982). The ground case referred in the grounds of

detention relates to an occurrence that took place on 24.02.2004 for which he was charged for various offences, namely, 341, 397 and 506(ii) IPC. The petitioner has twelve adverse cases to his credit all for various offences under IPC.

2. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for respondents.

3. The learned counsel appearing for the petitioner, after taking us through the grounds of detention and the available materials, has raised the following contentions: (i) Inasmuch as the detaining authority has failed to take note of the dismissal of bail application on 08.3.2004, the order of detention is liable to be quashed on the ground of non-application of mind; (ii) Inasmuch as there is discrepancy in the recovery of gold ornaments and the same was not verified/ ascertained, the detaining authority has committed

an error in passing the order of detention; (iii) There is delay in considering the representation of the detenu; and (iv) Arrest of the detenu was not intimated to his family members.

4. Insofar as the first contention, namely, non-application of mind by the detaining authority, is concerned, the learned counsel for the petitioner, by drawing our attention to paragraph 4 of the grounds of detention, would submit that inasmuch the bail application of the detenu was dismissed on 08.3.2004, the said vital fact has not been considered by the detaining authority while passing the order of detention. The learned counsel has also produced copy of the order of the learned Magistrate dated 08.3.2004 dismissing the bail application of the detenu and two others. However, in paragraph 4 of the grounds of detention, the detaining authority has specifically stated that he is aware that Ravi alias Yasin (detenu) is in remand and there is imminent possibility that he may come out on bail for the offences under Sections 341, 397 and 506(ii) IPC by filing bail application in the Court. He also referred to the fact that if he comes out on bail, he would indulge in further activities, which would be prejudicial to the maintenance of public order. Though the learned counsel appearing for the petitioner submitted that the detaining authority has not taken note of the dismissal of the bail petition dated 08.3.2004, as rightly argued by the learned Government Advocate that merely because the detaining authority has not referred to the dismissal of the bail petition dated 08.3.2004, it cannot be construed that the detaining authority has not applied his mind. According to him, first of all, there is no need to refer the said aspect and secondly, the detaining authority was aware of the fact that on the date of detention, the detenu was in remand, that is, in actual custody and he was also aware of the fact that by filing bail application, he may come out and indulge in further activities, which would be prejudicial to the maintenance of public order. In this regard, the learned Government Advocate very much relied on the decision of the Apex Court in ABDUL SATHAR IBRAHIM MANIK vs. UNION OF INDIA AND OTHERS ((1992) 1 SCC 1). In that case, while considering similar contention, Their Lordships, after referring earlier decisions of the Supreme Court, ultimately laid the following principles. Among those principles, clause 3 and 4 are relevant for our case, which reads as under:

"(1)

(2)

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly, the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5)

(6)"

5. It is clear from the above dictum that even in the absence of reference to the order dismissing the bail application, it does not amount to suppression of relevant material so long as the detaining authority was aware of the fact that the detenu was in actual custody. We have already referred to the statement made in paragraph 4 of the grounds of detention, which amply show that the detaining authority was aware of the fact that the detenu was in remand and by filing bail application, he may come out and indulge in further activities, which would be prejudicial to the maintenance of public order. In the light of the law laid down by the Apex Court referred to above and in view of the factual information as seen from paragraph 4 of the grounds of detention, we are unable to accept the first contention raised by the learned counsel for the petitioner.

6. Coming to the second contention, namely, discrepancy in the recoveries made, it is true that in the requisition for remand, the sponsoring authority, namely, Inspector of Police, Elephant Gate Police Station, in the penultimate paragraph, has stated that based on the confession statement of the accused, 6-3/4 sovereigns of Gold were recovered. This is clear from page 120 of the booklet supplied to the detenu. The learned counsel appearing for the petitioner, by drawing out attention to page 99 of the booklet, Form 95, would contend that in the light of the list of properties seized and referred therein and in view of the discrepancy, without proper explanation, the detaining authority has passed the order of detention, which vitiates the same. For this, the learned Government Advocate, after taking us through page Nos. 49, 57, 68 and 99 of the booklet, would submit that if the quantity referred therein are added, there cannot be any discrepancy as claimed by the learned counsel for the petitioner. He also points out that the reference made at page No.99 relates to one Crime No., namely, 118 of 2004. As rightly pointed out by the learned Government Advocate, if we consider the recovery made in all the four cases, we are of the view that there is no discrepancy and the detaining authority has not committed any error in arriving his conclusion. Accordingly, we reject the second contention also.

7. Regarding the third contention, namely, delay in considering

the representation of the detenu, the particulars furnished by the learned Government Advocate show that the representation was received by the Government on 20.4.2004, remarks were called on 21.4.2004 and remarks were received from the sponsoring authority on 27.4.2004. Thereafter, the file was submitted to the Under Secretary and the Deputy Secretary on 29.4.2004 and finally, the Minister for Prohibition and Excise has passed an order on 30.4.2004 rejecting the representation of the detenu. The rejection letter was prepared on 03.5.2004 and ultimately, the same was served on the detenu on 05.5.2004. Though it is stated that there was delay in preparation of rejection letter after the order was passed by the competent authority rejecting the representation of the detenu on 30.4.2004, in view of the fact that in between 30.4.2004 and 03.5.2004, two holidays intervened, that is, on 01.5.2004 and 02.5.2004, being Saturday and Sunday, we are of the view that it cannot be claimed that there was unreasonable delay in preparation of rejection letter. Accordingly, we find no force in the third contention also.

8. Finally, regarding the last contention that the fact of arrest of the detenu was not intimated to the family members, the learned Government Advocate produced a file, which shows that the wife of the detenu, namely, Raji, was intimated on 02.4.2004. Hence, the said contention is also liable to be rejected.

9. In the light of what is stated above, we do not find any valid ground for interference. Accordingly, the Habeas Corpus Petition is dismissed.

Index: Yes
Internet: Yes

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To

1. The Secretary to Government
Prohibition and Excise Department
Fort St. George
Madras - 600 009

2. The Commissioner of Police
Greater Chennai
Chennai

3. The Superintendent
Central Prison
Chennai

4. The Joint Secretary to Government
Public (Law and Order)

Fort St. George
Madras - 600 009

5. The Public Prosecutor
High Court
Madras - 104

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