IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/09/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.P. SIVASUBRAMANIAM

H.C.P.NO.638 OF 2004

Magi @ Mahendran @ Ravi
S/o. Thangaraj .. Petitioner

-Vs-

1. The Commissioner of Police,
Egmore, Greater Chennai.

2. The Secretary,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George,
Madras 600 009.

3. The Superintendent,
Central Prison, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.Ganesh Rajan

For Respondents : Mr. Abudukumar Rajarathinam
Govt. Advocate (Crl.Side)

:J U D G M E N T

P.K. MISRA, J

The detenu has filed the present Habeas Corpus Petition challenging the order of detention dated 28.1.2004, passed by the Commissioner of Police, Greater Chennai, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1 982 (Tamil Nadu Act 14 of 1982), on the footing that the present petitioner is a Goonda within the meaning of Section 2(f) of the said Act, as it is necessary to prevent such person from acting in any manner prejudicial to the maintenance of public order.

2. The aforesaid order is based on the incident dated 8.1.2004, relating to which R6 Kumaran Nagar Police Station Crime No.17/2004, under Sections 341,336,427,307,385 and 506(2) IPC, has been registered. The petitioner was arrested on the very same day, namely, 8.1.2004 and was produced before XXIII Metropolitan Magistrate, Saidapet and remanded till 22.1.2004 and the said remand was further extended till 5.2 .2004. In the grounds of detention, reliance has been placed on five adverse cases, namely, R5 Choolaimedu P.S Cr.No.799/2002, under Sections 147, 148, 341 & 302 IPC., J1 Saidapet P.S Cr.No.1164/2003, under Sections 341,324 & 506(2) IPC., J1 Saidapet P.S Cr.No.1234/2003, under Sections 341 & 307 IPC., J1 Saidapet P.S Cr.No.1253/2003, under Sections 341,332,336,427,353,307 & 506(2) IPC and R6 Kumaran Nagar P.S Cr.No.1203/2003 under Sections 341,323 IPC & 4(1)(j) TNP Act.

3. The detaining authority in paragraph 4 of the grounds of detention has indicated as follows :-

"4. I am aware that Thiru Magi @ Mahendran @ Ravi is in remand and there is imminent possibility that he may come out on bail for the offences under Sections 341,336,307,385,427 and 506(2) IPC by filing bail application in the Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order."

4. It is not disputed that as per the materials available at Page Nos.35, 81 and 123 of the booklet supplied to the petitioner, the very same petitioner was also remanded in connection with 2nd, 3rd and 4 th adverse cases by IX Metropolitan Magistrate, Saidapet.

5. In the above background of the basic facts, learned counsel for the petitioner has contended that the detaining authority has not at all considered the fact that the petitioner was in custody and since no bail application had been filed, o imminent possibility of the petitioner coming out on bail. In the alternative, it is submitted by him that even assuming that there was possibility of filing bail application in future and being released on bail, the detaining authority has not at all applied his mind to the fact that there were separate remand orders in respect of other crimes, and therefore, there was no imminent possibility of the petitioner being released on bail.

6. In support of his contention that since no bail application had been filed there is no imminent possibility of the petitioner coming out on bail, learned counsel for the petitioner has placed reliance upon the decision of this Court reported in 2004 M.L.J.(Crl.)767 (C. PADMAVATHY v. STATE OF TAMIL NADU, REP. BY SECRETARY, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI AND ANOTHER). In the aforesaid decision it was not laid down that in all cases where bail application has not been filed, the detaining authority is powerless and no order of preventive detention can be passed. What has been emphasised in the said case is that mere statement of the detaining authority may not be enough. We do not think that it has been laid down as an inexorable principle of law that in cases where the proposed detenu is in custody in connection with some criminal cases, the detaining authority cannot pass an order of preventive detention unless and until a bail

application is filed by the proposed detenu.

7. Discussion in subsequent paragraphs regarding various decisions of the Supreme Court does not indicate that filing of bail application is a condition precedent for the detaining authority to come to a conclusion that there is compelling reason to pass an order of preventive detention in respect of a person in custody. What is required is that the detaining authority is reasonably satisfied on cogent material that there is likelihood of release of such a person in custody. The submission made on behalf of the petitioner to the effect that in the absence of any bail application having been filed there was no imminent possibility of the petitioner coming out on bail, cannot be accepted as such. However, the alternative submission requires serious consideration.

8. In support of his alternative submission, contention, the learned counsel has placed reliance of the decisions reported in AIR 1990 SC 1196(DHARMENDRA SUGANCHAND CHELAWAT AND ANOTHER v. UNION OF INDIA AND OTHERS
and 1992(1) Crimes 1160(KANNAN alias KANNAPPAN v. STATE OF TAMILNADU & ANOTHER).

9. In AIR 1989 SC 2027(N. MEERA RANI v. GOVT. OF TAMIL NADU), while considering the validity of the detention in respect of a person already in custody, it was observed :

22. …. We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position.

10. Subsequently, in the decision reported in AIR 1990 SC 1196 (cited above), after referring to the aforesaid decision as well as several other decisions, it was observed:-
 19. The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression compelling reasons in the context of making an order for detention of a

person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activit ies.
(Emphasis added)

11. While considering the question as to whether .... there was a compelling reason for passing the order for preventive detention of the detenues although they were in custody, the Supreme Court further observed:-
 21. We have given our careful consideration to the aforesaid submission of the learned Attorney General. We are, however, unable to agree with the same. In the grounds of detention the detaining authority has only mentioned the fact that the appellants has been remanded to judicial custody till October 13, 1988. The grounds of detention do not show that the detaining authority apprehended that the further remand would not be granted by the Magistrate on October 13, 1988, and the appellants would be released from custody on October 13, 1988. Nor is there any material in the grounds of detention which may lend support to such an apprehension. On the other hand we find that the bail applications moved by the appellants had been rejected by the Sessions Judge a few days prior to the passing of the order of detention on October 11, 1988. The grounds of detention disclose that the appellants were engaged in activities which are offences punishable with imprisonment under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985. It cannot, therefore, be said that there was a reasonable prospect of the appellants not being further remanded to custody on October 13, 1988 and their being released from custody at the time when the order for preventive detention of that appellant was passed on October 11, 1988. In the circumstances, we are of the view that the order for detention of the appellants cannot be sustained and must be set aside and the appellants should be released forthwith.
(Emphasis added)

12. In the Division Bench decision of this Court reported in 1992(1) Crimes 1160(cited above), considering the nature of the ground case as well as the antecedent cases, it was observed :-

 ... There is no reason to think that the detaining authority was unaware of the fact that the petitioner was a remand prisoner not only in the ground case, but in several other cases. The only consideration given by him in the grounds related to likely release of the petitioner on bail in the ground case and not in the other cases in which also he is a remand prisoner.

Ultimately, on the basis of the aforesaid conclusion, the order of detention was quashed.

13. On a reading of the aforesaid decisions of the Supreme

Court and the earlier Division Bench decision of this Court, even though we do not agree with the submission of the learned counsel for the petitioner that in the absence of filing of any bail application, the imminent possibility of the detenu coming out on bail is eschewed, we are convinced that non-consideration by the detaining authority the very relevant fact that the detenu had also been remanded in connection with three other cases, in two out of which at least, there were equally serious allegations regarding commission of offence under Section 3 07 IPC, has the effect of vitiating the subjective satisfaction of the detaining authority regarding possibility of the detenu coming out on bail. It is of course true that in the second adverse case, in respect of which also there was a remand, the offences were under Sections 341, 324 and 506(ii) IPC which were obviously less grave than the offences in the ground case registered under Sections 341, 336, 427, 307, 385 and 506(2) IPC. However, the 3rd and 4th adverse cases, in relation to which also the remand orders were applicable, related to commission of serious offences like 307 and 336 IPC. According to us, the non-consideration of the aforesaid aspect has the effect of vitiating the order of detention.

14. Learned counsel for the State, however, has placed reliance upon two unreported orders dated 24.11.2003 in HCP.No.677 of 2003 and order dated 24.11.2003 in HCP.No.689 of 2003. In both the orders passed by the very same Bench on the very same day, reference has been made by the detaining authority to the order of remand in the ground case alleging commission of offences under Sections 323,336, 397 and 307 IPC. The ground case in both the orders was the same. Even though there was reference to remand in the ground case, there was no reference to remand in connection with two other crimes, wherein there was allegation of commission of less serious offences. In the aforesaid background, it was observed:
 The omission to mention two other crimes contained in the remand requisition would not be fatal to this detention order. As rightly pointed out, the offences found in the ground case is graver than the offences for which he was booked in those two other cases. Hence, there is no substance in the said submission.

In our opinion, on the facts of the present case, the observation made in the aforesaid two orders is not applicable. As already indicated, in the present case, the offences in at least two other crimes, in respect of which there were separate remand requisitions, were equally serious, and therefore, the ratio of the earlier Division Bench of this Court in 1992(1) Crimes 1160 (cited above) is applicable.

15. Applying the said principle, in our opinion, the nonconsideration of the very relevant factor that the accused/detenu had been remanded in connection with two other crimes, wherein commission of equally serious offences had been alleged, has the effect of vitiating the conclusion of the detaining authority regarding the compelling necessity to pass the order of detention. Accordingly, the order of detention is quashed.

16. In the result, the HCP is allowed and the detenu is set at liberty forthwith unless he is required in any other connected case.

Index : Yes
Internet: Yes

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To

1. The State of Tamilnadu,
Represented by its Secretary,
Department of Prohibition and Excise,
Fort St George, Chennai 9.

2. The Commissioner of Police,
Greater Chennai,Egmore, Chennai 8.

3. The Public Prosecutor,
High Court, Madras.

4. The Superintendent,
Central Prison, Chennai.