In the High Court of Judicature at Madras

Dated:28.04.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice J.A.K. SAMPATHKUMAR

Habeas Corpus Petition No.144 of 2006

T. Malathi .. Petitioner

vs.

1. The District Magistrate &
   District Collector
   Villupuram District
   Villupuram.

2. The Secretary to government
   Prohibition & Excise Department
   Fort St. George
   Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus calling for the records pertaining to the order of the 1st Respondent dated 13.1.2006 in C2/2567/2006 detaining the detenue Arumugam, Son of Amirthalingam as a Goonda under Tamil Nadu Act 14/1982 and set aside the same and direct the respondents to produce the said detenue now detained in the Central Prison, Cuddalore before this Hon'ble Court and set him at liberty.

For petitioner : Mr. R. Srinivas

For respondents : Mr. Abudukumar Rajaratrhinam
Govt., Advocate (Crl.)

ORDER

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

The petitioner, by name, T. Malathi challenges the impugned order of detention dated 13.01.2006, detaining one

Arumugam, as "Goonda" 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, 1982 (in short "Tamil Nadu Act 14 of 1982").

2. In order to understand the claim of the petitioner, it is useful to refer the following details stated in the Grounds of Detention:

(a) The detenu Arumugam, Son of Amirthalingam is the brother of Manikandan alias "Dadha" Manikandan of Kuilapalayam village, Vanur Taluk, Villupuram District. In Kuilapalayam village, two factions, one headed by "Dhadha" Manikandan and another by Boopalan, were functioning mostly engaging themselves in "Katta Panchayats" and violent activities like committing murder for wage. Enmity developed between the two factions due to their profession. While so, Tamilselva Ganapathi belonging to Manikandan alias "Dadha" Manikandan faction was murdered by Boopalan faction, and Venkat alias Vedhanayagam was cited as an accused in that case. The case ended in acquittal after trial. Enraged by the acquittal, Arumugam brother of Manikandan alias "Dadha" Manikandan, and his associates with the common object of committing murder of Venkat alias Vedhanayagam formed themselves into an unlawful assembly armed with Veecharival, on 25.10.2005 at about 5.00 p.m., went in a Tata Sumo car bearing registration No.TN-28-C-3697 to Periyamudaliar Chavadi, Diwan Kandappa Nagar on Periyamudaliar Chavadi-Auroville Road and wrongfully restrained Venkat @ Vedhanayagam in front of Arunagiri workshop while he was riding on his Hero Honda Motor Cycle PY-01-T-1000 and on seeing Arumugam and his associates, Venkat alias Vedhanayagam abandoned his motor cycle and started running through the vacant site belonging to one Somasekaran and Arumugam cut Venktat on his head with the veecharival; the associates of Arumugam cut Venkat on his face and neck and caused his instantaneous death. On seeing this cruel incident, Elumalai and Raja fled the scene. The nearby shop owners and STD booth owners have closed their shops. A feeling of insecurity prevailed in that area. Normal life activities came to a stand still. On the complaint of Muthuvel, father of deceased Venkat alias Vedhanayagam, a case was registered in Cr.No.644/2005 of Kottakuppam Police Station u/s.147, 148, 341 and 302 IPC.

(b) It is further seen that the said Arumugam surrendered before the Judicial Magistrate, Thirukoilur on 27.10.2005 and the learned Judicial Magistrate, remanded him to custody till 10.11.2005. He was taken to police custody on 31.10.2005 and during interrogation, on 04.11.2005 he voluntarily confessed about the role played by him in the commission of offence. On the basis of his confession

statement, case property was seized. The offences charged under Sections 147, 148, 341 & 302 IPC relate to assault and act endangering to human life and the personal safety of others and criminal intimidation of causing death and as such punishable under Chapter XVI of Indian Penal Code.

(c) The Detaining Authority, after satisfying himself that the said Arumugam is habitually committing crimes and also acting in a manner prejudicial to the maintenance of Public Order and as such he is a "GOONDA" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, passed the impugned Detention Order. He also concluded that by committing the above described grave crime in the public, the detenu has created alarm and feeling of insecurity in the minds of the public residing in the area and thereby acted in a manner prejudicial to the maintenance of Public Order.

3. Heard Mr. R.Srinivas, learned counsel for the petitioner and Mr. Abudukumar Rajarathinam, learned Government Advocate (Crl.side) for the respondents.

4. At the foremost, learned counsel for the petitioner contended that in the absence of valid order by the learned Judicial Magistrate extending the remand of the detenu, reference made in para-4 of the Grounds of Detention as if his remand was extended by order of the Magistrate is factually incorrect, which amply shows the non-application of mind on the part of the Detaining Authority, which vitiates the impugned detention order passed by him.

5. While elaborating the said contention, learned counsel has brought to our notice Page 82 of the paper book supplied to the detenu, which shows that on 07.11.2005 the accused was produced before District Munsif-cum-Judicial Magistrate, Vanur and the learned Magistrate remanded him to judicial custody till 17.11.2005. On 17.11.2005, the accused was produced and his remand was extended till 01.12.2005. On 01.12.2005, since the accused was not produced, the learned Magistrate directed for the production of the accused on 15.12.2005. On 15.12.2005 also the accused was not produced and again a direction was issued by the Magistrate for production of the detenu on 29.12.2005. On 29.12.2005, the accused was produced and remand was extended till 12.01.2006. On 12.01.2006, since the accused was not produced, the learned Magistrate, directed for the production of the accused on 25.01.2006. According to the learned counsel for the petitioner, except 07.11.2005 and 29.12.2005, on all other occasions the accused was not produced and the learned Magistrate did not extend the remand and in such circumstances, the Detaining Authority is not justified in stating that "his

remand was ordered to be extended" and it exposes non-application of mind on the part of the Detaining Authority. He also submitted that the detaining authority referred incorrect statements in the Grounds of Detention and on both the grounds, the impugned Detention Order is liable to be quashed. In this regard, he relied on the Full Bench decision of this Court in Hidaya Banu vs. State of Tamil Nadu reported in 2002 MLJ (Crl.) 608 and two Division Bench decisions of this Court, viz., (i) Abdul Alim vs. State of Tamil Nadu (2003 (1) CTC 673); and (ii) Mohamed Sathali Premnasir vs. State of Tamil Nadu (2006 (1) Law Weekly (Crl.) 155).

6. On the other hand, learned Government Advocate pointed out that though the accused was not produced on 17.11.2005 and 15.12.2005 as well as on 12.01.2006, by valid order dated 07.11.2005, the accused was remanded to custody and the same was extended and in fact, the accused was produced on 29.12.2005 and the learned Judicial Magistrate, Vanur extended his remand till 12.01.2006. No doubt, on 12.01.2006, the accused was not produced, however, the learned Magistrate directed for the production of the accused on 25.01.2006. The same has been correctly stated in para 4 of the Grounds of Detention. He also contended that the decisions relied on by the learned counsel for the petitioner are not applicable to the case on hand.

7. In 2002 MLJ (Crl.) 608 (cited supra), as rightly pointed out by the learned Government Advocate, though the detenu therein was taking treatment as an inpatient in the Government Hospital, Royapettah, Chennai the Detaining Authority has mechanically described the detenu to be a remand prisoner and lodged in Central Prison. In those circumstances, after finding that the detenu was factually and admittedly not in Jail on the day when the detention order was passed, the Full Bench of this Court quashed the detention order.

8. In the decisions relied on by the learned counsel for the petitioner in 2003 (1) CTC 673 and 2006 (1) Law Weekly (Crl.) 155 (both cited supra), there is no material to show that the remand was extended by an order of learned Magistrate. On going through the factual details in all the three cases, we are satisfied that these cases are not applicable to the case on hand. As rightly pointed out by the learned Government Advocate and also it is not in dispute that when the accused was produced on 07.11.2005, learned Judicial Magistrate, Vanur remanded him to judicial custody till 17.11.2005 and thereafter, on 17.11.2005, the accused was produced and the learned Magistrate extended the remand till 01.12.2005. No doubt, on the next two dates, i.e., 01.12.2005 and 15.12.2005, the accused was not produced before the Magistrate, however, on 29.12.2005, he was

produced and remand was extended till 12.01.2006. It is not the case of the petitioner that after 01.12.2005 the detenu was not in custody. On the other hand, he was produced before the Magistrate on 29.12.2005 and his remand was extended till 12.01.2006. It is true that on 12.01.2006, the accused was not produced and the learned Magistrate directed for his production on 25.01.2006. This aspect, as pointed out by the learned Government Advocate has been correctly stated in para 4 of the grounds of detention.

9. He also relied on the Division Bench decision of this Court dated 27.10.2003 made in HCP.No.453 of 2003 (Thomaiya Rajan @ Rajan vs. The Commissioner of Police, Greater Chennai, Chennai) wherein in an identical situation, this Court rejected similar stand taken by the petitioner therein. The following discussion and conclusion in para 3 of the said judgment is relevant.

> " 3. As against this, the Learned Additional Public Prosecutor points out that though the accused was not produced on 15.11.2002, the Magistrate himself directed the detenu to be produced on 29.11.2002. Learned Additional Public Prosecutor further submits that there may be good reasons to find fault with the remand order, but in these proceedings it was not the remand order which is in challenge but the detention order. The argument is absolutely correct. In the remand order itself, the Magistrate directed the detenu to be produced on 29.11.2002. He has not outright rejected the remand application. Otherwise, he would have said so. We are not here to decide about the merits of the Magistrate's order in the aforementioned judgment, on which reliance is placed. It is obvious that there the remand was not extended at all and it was merely expressed by the Metropolitan Magistrate that the hearing was to be held on 29.07.2002. There was no direction by the Magistrate to produce the detenu on a particular day, thereby it was clear that the remand application itself was rejected on that day and that there the detaining authority could not have sought for an order of remand on the day when the detention order was passed. These are the differentiating facts in this case and the aforementioned relied upon judgment.

> Therefore, the argument of the learned counsel for the petitioner is incorrect and it is rejected."

We are in agreement with the said conclusion and we are of the view that the same is applicable to the case on hand. Merely because the Detaining Authority has wrongly mentioned in paragraph 4 that his remand was ordered to be extended on all occasions, it cannot be presumed that the Detaining Authority has not applied his mind before passing the impugned order of detention.

10. It is also relevant to note that in 1992 SCC (Crl.) 1 (Abdul Sathar Ibrahim Manik vs. Union of India) the Hon'ble Supreme Court in guideline-1 has stated, "a detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody." As discussed above, para 4 of the grounds of detention amply shows that the Detaining Authority was aware that the detenu was already in custody and by order dated 12.01.2006 the Judicial Magistrate, Vanur stated that "accused not produced, to be produced on 25.01.2006.". We therefore hold that the detaining authority has applied his mind while passing the detention order. Accordingly, we reject the contention of the learned counsel for the petitioner.

11. The learned counsel for the petitioner, by drawing our attention to the reference made in para-6 of the Grounds of Detention, contended that inasmuch as the detenu has not moved any bail application, there is no real possibility for the detenu to come out on bail and the detaining authority is not justified in arriving at the satisfaction. We are unable to concur with the said contention, since para-6 shows that the detaining authority was aware of the fact that the detenu Arumugam is in remand in Central Prison, Cuddalore in Crime No.644/2005 of Kottakuppam Police Station and has not moved any bail application. He was also very well aware that there is real possibility of his coming out on bail by filing bail application in the case in which he was remanded since in similar cases bails are granted by the concerned Court or Higher Courts after lapse of time. It cannot be contended that filing of bail application is completely prohibited. In other words, the detenu is free to file bail application at any moment. In such circumstances, taking note of the activities of the detenu and in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of Public Order, the detaining authority invoked Act 14 of 1982 and we do not find any flaw in the decision arrived at by the Detaining Authority.

12. Finally, learned counsel for the petitioner contended that though in paragraph 4 of the grounds of detention the detaining authority has described the detenu as "habitually committing crimes", except the ground case there is no material to show that the detenu was involved in such instances and prayed for interference in the impugned order.

13. In this regard it is relevant to point out that in Subbaiah vs. The Commissioner of Police, Madras City [1993 Law Weekly (Crl.) 113], a Division bench of this court after referring the definition of "GOONDA" has observed that the number of instances are immaterial. Even if one incident, in the opinion of the detaining authority, causes prejudice to the maintenance of public order, he is free to invoke Act 14 of 1982. The following observation in para-28 of the judgment is relevant.

> "28. .... The definition of 'goonda' refers to the habitual commission or attempt to commit or abatement of the commission of offences specified in the section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or abets commission of offences. Hence it is not necessary further for the authority to wait for his committing another act which is likely to cause prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also as to whether such acts will cause prejudice to the maintenance of public order,. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case it will not be preventive detention but a case of detention after the commission of the offence. Hence a reading of S.3(1) together with S.2(a) and (f) of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goonda within the meaning of S.2(f) they can themselves be

taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order. "

14. In the light of the above principle, if we consider the act of the detenu herein in committing murder in a public place by assaulting a group and causing insecurity in the minds of the passersby and the residents as well as the nearby shop owners, the detaining authority is justified in detaining the detenu branding him as Goonda under the Act 14 of 1982. Taking all the materials, the detaining authority has concluded that feeling of insecurity prevailed in that area and normal life came to a standstill. Accordingly, we are unable to accept the contention raised by the learned counsel for the petitioner.

15. It is also brought to our notice by the learned Government Advocate that in the confession statement available at pages 48 to 53 of the paper book supplied to the detenu he has admitted that prior to this incident, by assaulting a gang, he murdered one Dr. Murugiyan. He also admitted that he was detained as Goonda under the very same Act on a previous occasion and came out from prison after a period of 15 months and thereafter by associating with his gang members he committed the murder of Venkat @ Vedhanayagam. The above factual details also support the decision taken by the detaining authority. Accordingly, we reject the contention raised by the learned counsel for the petitioner.

In the light of the above discussion, we do not find any error or infirmity or valid ground for interference. Hence, this petition fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to government
   Prohibition & Excise Department
   Fort St. George
   Chennai 600 009.

2. The District Magistrate &
   District Collector
   Villupuram District
   Villupuram.

3. The Superintendent,
central Prison, Cuddalore.

4. The Joint Secretary to Government,
Public (Law and order), Fort St. George,
Chennai-9

5. The Public Prosecutor,
High Court, Chennai-104

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