

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2007

CORAM :

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN  
and  
THE HONOURABLE MR. JUSTICE R.REGUPATHI

H.C.P. No. 1057 of 2007

Moideenpitchai

... Petitioner

Vs.

1. The State of Tamilnadu  
rep. by its Secretary  
to Government, Prohibition  
and Excise Department  
Fort St. George, Chennai 600 009.

2. The Commissioner  
Egmore, Chennai 600 008.

... Respondents

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

For Petitioner : Mr. R.Thanjan  
For Respondents : Mr. N.R.Elango  
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D. DINAKARAN. J)

Challenging the order of detention dated 31.3.2007 made in  
No.131/BDFGISSV/2007, passed by the second respondent branding the  
petitioner as a 'Goonda' under the provisions of the Tamil Nadu Prevention  
of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,  
Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and  
Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), the petitioner, now  
confined in Central Prison, Puzhal, Chennai, has filed this Habeas Corpus  
Petition to set aside the order of detention and directing the respondents  
to produce him before this Court and set him at liberty.

2. The ground case based on which the impugned order of detention  
has been passed is that on 19.3.2007, while the complainant Mani was  
proceeding near the junction of Josier Street and Nageshavar Rao Street,

the detenu, who came in an auto, wrongfully restrained him and threatened to hand over some money. When the complainant refused, the detenu beat him, due to which the complainant fell down and immediately, the detenu, at the point of knife, took away cash of Rs.325/- and also snatched the gold ring from the complainant and attempted to escape. The complainant, raising hue and cry, chased the detenu and on hearing the cry, the public, who gathered there, also tried to apprehend the detenu. On seeing them, the detenu pelted stones on the public, creating a terror and panic situation at the place and using the panic situation, when the detenu tried to escape, the complainant with the help of the public, apprehended the detenu and handed over him to the police. On the complaint given by the complainant, a case in Crime No.294 of 2007 has been registered on the file of F3 Nungambakkam Police Station for offences punishable under Sections 341, 336, 392 and 506(2) I.P.C. and the detenu was arrested and sent for judicial remand.

3. Taking into consideration the above said ground case as well as eleven other adverse cases, viz., Cr.No.172/2004 for the offences under Sections 379, 323, 307 and 506(2) I.P.C. on the file of G1 Vepery P.S., Cr.Nos.1256/2005, 1258/2005, 1259/2005, 1257/2005 for the offence under Section 379 I.P.C. on the file of Redhills Police Station, Cr.Nos.813/2005, 814/2005, 809/2005 and 810/2005 for the offence under Section 379 I.P.C. on the file of Manali Police Station and Cr.Nos.289/2007 and 293/2007 for the offence under Section 379 I.P.C. on the file of F3 Nungambakkam Police station, the second respondent/detaining authority having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner/detenu, assailed the order of detention on the ground of non-application of mind. He submits that there is no proximity between the first adverse case, which was registered for offences including 379 and 307 I.P.C. and the ground case, which was registered for the offence under Section 392 I.P.C. and the other adverse cases registered for the offence under Section 379 I.P.C. also cannot be relied upon while passing the detention order, as they only relate to law and order problem and what remains is only the ground case and in view of the decision of the Apex Court in *DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU* [(2003) 1 CRIMES 446], the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention.

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the first adverse case would have no impact while passing the order of detention for want of proximity, as the occurrence in the said case had taken place on 8.2.2004. Similarly, other adverse cases mentioned in the grounds of detention also cannot be relied upon, as they do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982, as per which, the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of these activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order".

7.1. In *DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU* [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

"... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. The above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in *MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI*, [(2004) M.L.J. (Cr1.) 306].

8. Admittedly, in the instant case, adverse cases 2 to 11 relate to the offence of theft punishable under Section 379 I.P.C. and the ground case relates to the offence of robbery punishable under Section 392 I.P.C. and hence, the ratio laid down in *DARPAN KUMAR SHARMA's* case, cited supra, squarely applies to the present case. Therefore, we are of the considered view that the impugned order of detention vitiates on the ground of non-application of mind.

Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

sra

Sd/  
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,  
Prohibition and Excise Department  
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,  
Egmore, Chennai 600 008.
3. The Public Prosecutor  
High Court of Judicature at Madras  
Madras - 600 104.
4. The Superintendent Central Prison,  
Puzhal, Chennai.
5. the Joint Secretary to Govt,  
Public (Law and Order) Fort St George,  
Chennai.9

+ One cc to Mr. R. Thanjan, Advocate sR 65778  
SCD (co)  
sg14/11/07

HCP.No.1057 of 2007

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