IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2009

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE R.SUBBIAH

Habeas Corpus Petition No.1741 of 2008
and
M.P.No.1 of 2008

Venkatesan @ Poonga Venkatesan @
Kathiresan @ Vinayagamurthy @ Vijay ... Petitioner

Vs.

1. State rep.by
   Secretary to Government,
   Home, Prohibition and Excise Department,
   Secretariat,
   Chennai-600009.

2. The Commissioner of Police,
   Chennai City Sub-Urban Area,
   St.Thomas Mount,
   Chennai-600 016. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the detenu Venkatesan @ Poonga Venkatesan @ Kathiresan @ Vinayagamurthy @ Vijay, son of Kannan, aged 37 years, who is now detained in Central Prison, Puzhal, Chennai-66, in pursuance of the detention order passed by the 2nd respondent on 15.10.2008 in Memo No.15/BDFGISSV/2008, before this Court, call for the records, set aside the order and set the detenu at liberty forthwith.

For petitioner : Mr.Swamidoss Manokaran

For respondents : Mr.N.R.Elango, APP.,

O R D E R

R.SUBBIAH, J.,

The petitioner is the detenu, who is detained as an 'Immoral Traffic Offender' under 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).

2. It is alleged that the detenu is a habitual offender under the Immoral Traffic (Prevention) Act. For clamping the order of detention, the detaining authority has relied upon four adverse cases and the ground case. It is alleged that the detenu brought girls in cars and induced innocent family men and youths to have sexual intercourse with the girls by taking them to lodges or to the brothel house run by him at Plot No.7, 2nd Street, Ramana Nagar Extension, Madambakkam, for money. He was arrested in the ground case on 05.10.2008 and a case was registered in Crime No.4 of 2008 by the Inspector of Police, Anti Trafficking Cell, CB CID for the offences under Sections 3(1), 4(1), 5(1) and 6(1) of the Immoral Traffic (Prevention) Act. The sponsoring authority, namely, the Inspector of Police, Anti Trafficking Cell, CB CID, sent a proposal on 11.10.2008 to the detaining authority, the 2nd respondent herein, to take action against the detenu under Act 14 of 1982 stating that the activities of the detenu adversely affect the maintenance of the public order. The detaining authority, after considering the entire materials placed before him, has passed the order of detention dated 15.10.2008, branding the detenu as an 'Immoral Traffic offender' as contemplated under section 2(g) of Act 14 of 1982 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Challenging the said detention order, the detenu has come forward with this habeas corpus petition, by raising various grounds.

3. Learned counsel appearing on behalf of the petitioner vehemently contended that the order of detention was passed by the 2nd respondent without application of mind. Further more, the detenu was curtailed from making effective representation, by not furnishing him certain documents in the language known to him, which has caused much prejudice to his rights guaranteed under Article 22(5) of the Constitution of India. In support of the above contention, the learned counsel made the following submissions by traversing through the grounds of detention and also various documents available in the booklet furnished to him, which are as follows:

(1) The information with regard to his arrest in the ground case was not intimated to his relatives by the police. In support of this contention, the learned counsel for the petitioner drew the attention of this Court to the arrest memo found at page 387 of the booklet. From the said document, it could be seen from column No.12 that the arrest intimation was given to one Nathan, the friend of the detenu through his mobile number. Thereafter, the learned counsel invited our attention to the remand report found at page 379, wherein it has been stated that the information was given to his relatives. By pointing out these two contradictory statements, namely, showing in one document that a person by name Nathan was informed through his cell phone and in another document mentioning that the intimation was given to his 'relatives', the learned counsel contended that had the information been given to his relatives, as stated in the remand report, the same could have found place in the arrest memo also. On the contrary, in the arrest memo, it has been mentioned as if the information was given to the friend of the detenu, by name, Nathan. The detenu has no such friend by name Nathan. Therefore, the above contradiction would show that the entire fact is a concocted story. But the detaining authority, without getting any satisfactory explanation from the sponsoring authority for this contradiction, passed the impugned order mechanically. Therefore, the said order totally suffers from non-application of mind and on this ground, the order of detention is liable to be set aside.

(2) Though the detaining authority has relied upon four adverse cases and one ground case, the detenu was not arrested in the adverse cases, which are said to have taken place much earlier to the date of arrest in the ground case. Therefore, it could be safely inferred that the alleged 'habitual' nature is missing, which is very much essential to clamp the order of detention.

(3) In the reply statement filed by the sponsoring authority to the bail application filed by the detenu before the Magistrate's Court, a list of 15 cases has been given. But in the counter affidavit filed in the present petition, it has been admitted by the respondents that in most of the cases referred to in the reply affidavit filed before the Magistrate's Court, the detenu has not been cited as an accused. Under such circumstances, the sponsoring authority ought to have placed the bail application and connected documents before the detaining authority for arriving at a proper subjective satisfaction. Moreover, the bail

application was filed on 13.10.2008 itself, whereas the detention order was passed only on 15.10.2008. These facts and circumstances would clearly show that the sponsoring authority wantonly suppressed the fact about pendency of the bail application. Since the bail application and connected documents were not placed before the detaining authority, he would not have reached the proper subjective satisfaction before passing the order and hence the order of detention is liable to be set aside for want of proper subjective satisfaction.

(4) Certain documents found in page Nos.15,85, 89, 93, 97, 101, 105, 109, 187, 191, 367, 371 and 403 are in English. But the detenu knows only Tamil language. Similarly, certain documents found in page Nos.7, 8, 19, 25, 29, 31, 35, 37, 43, 45, 47, 51, 53, 71, 73, 83, 87, 123, 125, 127, 135 to 153 are not legible. Though a representation dated 25.10.2008 to furnish Tamil version of certain documents and clear copies of illegible documents was sent, the same was not furnished. Therefore, the detenu was handicapped in making effective representation, which resulted in causing great prejudice to the right guaranteed under Article 22(5) of the Constitution of India

and as such the detention order is liable to be set aside on this ground also.

4. Countering the submissions made by the learned counsel for the petitioner, learned Additional Public Prosecutor has made his reply elaborately.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor and perused the materials on record.

6. On a careful perusal of the arrest memo, which is available at page No.387 of the booklet, we find that the arrest intimation was given to one 'Nathan' describing him as a friend of the detenu. No doubt, in the remand report, it has been mentioned that the said information was given to his relatives. But, we do not find any contradiction between these two documents for the reason that in the remand report it has been stated that the information was 'also' given to his relatives. The exact wordings found in the remand report in Tamil at page No.379 are as follows:

"...இது சம்பந்தமாக அவர் உறவினருக்கும் தகவல் தெரிவிக்கப்பட்டது...."

The said wordings would go to show that apart from the person mentioned in the arrest report, his relative was also informed. Moreover, as contended by the learned Additional Public Prosecutor, on the instructions of the detenu, a bail application was moved before the Magistrate's Court for his release. Under such circumstances, the submission made by the learned counsel for the petitioner that no proper intimation was given to his relatives, cannot be accepted and hence the same is rejected.

7. So far as the non-placement of bail application before the 2nd respondent is concerned, on a careful perusal of the entire documents, we find that the proposal was sent by the sponsoring authority on 11.10.2008. But the bail application came to be filed only on 13.10.2008. i.e.subsequent to the proposal sent by the sponsoring authority. On 15.10.2008 the detention order was passed by the 2nd respondent by considering all the materials which were made available upto 11.10.2008. Under such circumstances, we do not find any infirmity with regard to the non-placement of the bail application before the detaining authority, which came to be filed subsequent to the proposal sent by the sponsoring authority.

8. In this regard, reliance was placed by the learned counsel for the petitioner on the decision of a Division Bench of this Court in MAHINDER PAL SINGH, COFEPOSA DETENU, CENTRAL PRISON, CHENNAI .. vs.. STATE OF TAMIL NADU REP.BY SECRETARY TO GOVERNMENT, PUBLIC (SC) DEPT., CHENNAI AND ANOTHER reported in 1999(2) MWN (Crl.)17. On a perusal of the said case, we find that in that case the detention order dated 24.06.1998 came to be passed under the COFEPOSA Act. The detenu therein filed his bail application dated 19.06.1998, in which he retracted the confession statement made before the Customs Officer; the copy of the bail application was also served on the Special Public Prosecutor; but the said bail application was not placed before the detaining authority; while challenging the detention order, the detenu had raised one of the grounds among others, with regard to the non-placement of the bail application and the orders passed thereon; but the Department had taken a stand that the copy of the bail application served on the Special Public Prosecutor was not received by the Department; but, on going through the order dated 29.06.1998 passed in the bail application by this Court, it was noticed that a reference was made with regard to the served copy on the Special Public Prosecutor and further more, considering the contentions raised in the bail application about the retractment of the confession statement, the bail application was allowed. It was under those circumstances, this Court, having regard to the peculiar factual aspects of the cited case, has come to the conclusion that while dealing with the habeas corpus petitions, the

non-consideration of the bail application containing the retraction of confessional statement by the detaining authority was not justified and on that ground the detention order was set aside and the habeas corpus petition was allowed. But the factual position of the case on hand is totally different from that of the cited case. In the instant case, it appears that the bail application was filed by raising only usual grounds. Moreover, in the case relied upon, there was a gap of six days between the date of filing of the bail application and the date of passing the order of detention. But in the instant case, the entire material was forwarded by the sponsoring authority on 11.06.2008 itself before the bail application was filed by the detenu. It is the basic principle that each case has to be considered on its own merits. Therefore, the above judgment relied upon by the learned counsel for the petitioner does not in any manner, augment the cause of the detenu. Therefore, the contention about the non-placement of the bail application before the detaining authority in the present case would vitiate the detention order, cannot be accepted as a valid contention.

9. With regard to the other contentions raised by the learned counsel for the petitioner that the detenu was not arrested in the adverse cases and, as such, the basic ingredient of habitual commission of similar offences is missing, which is essential for clamping the order of detention, we are of the opinion that unlike in the case of "Goonda", there is no need for more number of adverse cases to clamp the order of detention under the Immoral Traffic (Prevention) Act. So far as "Goonda" is concerned, the word 'habitually' is thrust upon the definition clause itself under section 2(f) of the Act. But, the expression 'habitual' commission of similar offence is not found in the definition for "Immoral traffic offender' under section 2(g) of the Act. Moreover, the same yardstick cannot be applied for clamping the order of detention in case of 'immoral traffic offender', as in the case of "Goonda" since an immoral traffic offender is a social menace causing serious harm to the society by spoiling the life of innocent young girls and youths. Further more, from the records, we understand that in all the four adverse cases though the detenu was not arrested, he was shown as an absconding offender. Under such circumstances, we are not inclined to accept the contention raised by the learned counsel for the petitioner in this regard.

10. The petitioner would also file a petition, raising additional grounds, and the main attack to the impugned detention order is that though the police have stated in the written objections filed before the Judicial Magistrate, Alandur in Crl.M.P.No.6210 of 2008 that the accused was involved in 15 cases, in the counter, he has not been cited as as accused in those cases and hence the order of detention is vitiated. The other contention raised by the learned counsel for the petitioner in respect of the list of 15 cases

mentioned in the reply to the bail application, which was subsequently not pressed by the learned counsel for the respondents admitting the non-involvement of the detenu in those 15 cases, cannot stand in the way of deciding this case holding that the five adverse cases along with the ground case are sufficient to clamp the order of detention notwithstanding the respondents' admission in respect of 15 cases mentioned in the list, especially when the detaining authority has not shown to have drawn the subjective satisfaction on the basis of those 15 cases. But the detaining authority has drawn his subjective satisfaction only on the basis of the four adverse cases and the ground case barring the 15 cases mentioned in the affidavit.

11. With regard to the non-furnishing of certain copies of certain documents in the language known to the detenu, it is submitted by the learned Additional Public Prosecutor that the Tamil version of certain documents sought for by the detenu were not relied upon by the detaining authority while passing the detention order. In this regard, learned counsel for the petitioner strongly relied upon the endorsement in Form No.95 dated 03.05.2008 found in page 15 of the booklet, which is in English and the same reads as follows:

> "Property handed over to the Inspector of Police, AVS, Chennai for safe custody".

The Tamil translation of the said endorsement was not given to the detenu. Thus, by making submission on these lines the learned counsel for the petitioner stated that the non-furnishing of Tamil translation of certain copies curtailed the detenu from making an effective representation. Therefore, the right guaranteed under Article 22(5) was vitiated and hence, the order is liable to be quashed.

12. Per contra, learned Additional Public Prosecutor once again reiterated the endorsement referred to by the learned counsel for the petitioner pertaining to the adverse case is not at all relied upon by the detaining authority in the grounds of detention. Therefore, no prejudice has been caused to the detenu by not furnishing certain documents, which were not relied upon by the 2nd respondent.

13. We have perused the entire materials and found that the documents referred to by the learned counsel for the petitioner, were not relied upon by the detaining authority while passing the detention order. Under such circumstances, we do not find any merit in the submission made by the learned counsel for the petitioner that prejudice has been caused to the detenu in this regard. Similarly, on going through the certain pages referred to by the learned counsel for the petitioner, we are satisfied that all the relevant copies in the booklet are clear and legible. Therefore, we agree with the stand taken by the learned Additional Public Prosecutor that the said

ground was raised only for the sake of attacking the order one way or the other.

For all the above discussions, we find no reason to interfere with the order of detention passed against the the detenu. Therefore, this HCP is dismissed. Consequently, M.P.No.1 of 2008 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Secretariat,
   Chennai-600009.

2. The Commissioner of Police,
   Chennai City Sub-Urban Area,
   St.Thomas Mount,
   Chennai-600 016.

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

4. The Public Prosecutor,
   High Court, Madras.

H.C.P.No.1741/2008

CK(CO)
RVL 08.04.2009