

In the High Court of Judicature at Madras

Dated: 25.02.2009

Coram:

The Honourable Mr.Justice ELIPE DHARMA RAO
and

The Honourable Mr.Justice R.SUBBIAH

Habeas Corpus Petition No.2037 of 2008

Jayagopi @ Gopi

..Petitioner

Vs.

1. State of Tamil Nadu
rep.by its
Secretary to Government,
Home, Prohibition & Excise Dept.,
Fort St.George,
Chennai-600 009.

2. The Commissioner of Police,
ChennaiPolice,
Chennai-8.

..Respondents

Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Habeas Corpus, to call for the entire records relating to the petitioner's detention under Tamil Nadu act 14 of 1982 vide detention order dated 12.09.2008 on the file of the 2nd respondent herein made in proceedings No.308/BDFGISSV/2008 and quash the same as illegal and consequently direct the respondents to produce the said petitioner namely Jayagopal @ Gopi, son of Velu Nayakkar, aged 22 years, before this Court and set the petitioner at liberty from detention, who is now detained in Central Prison, Puzhal, Chennai-66.

For Petitioner .. Mr.C.C.Chellappan

For Respondents .. Mr.N.R.Elango, Addl.P.P.,

R.SUBBIAH, J.,

The petitioner challenges the impugned order of detention, dated 12.09.2008, clamped on him, by the 2nd respondent, branding him as 'Goonda' as contemplated under Section 3(1) 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).

2. For clamping the detention order, the detaining authority has relied upon two adverse cases, namely, Crime No.252 of 2008 on the file of P-3 Vyasarpadi Police Station for an offence punishable under section 392 IPC and Crime No.611 of 2008 on the file of P-6 Kodungaiyur Police Station for the offences punishable under sections 294(b), 427 and 506(2) IPC and one ground case. The allegations with regard to the ground case, as stated in the grounds of detention, are as follows:

The complainant Jayanathan, the Sales Manager of M/s.Tirunmala Milk Production Private Limited Company at Anna Nagar used to distribute milk in the early morning to their agents at Pulianthope, Pattalam, Choolai and Kannikapuram areas and collect money from the agents. On 19.08.2008 at 2.00 Hours, the complainant distributed the milk sachets to his agents and also collected the money totalling to Rs.1,08,618/- from them at 09.30 Hours and was proceeding in his Swaraj Mazda lorry bearing registration No.TN 20 X 0657 to Kannadhasan Nagar Thirumala Milk Depot, with the driver Sathish and one Maharajan, helper. While he was on the way at Mullai Nagar burial ground bridge at 10.00 Hours, the detenu came in a motor cycle accompanied with Raghu and Nagaraj, overtook the said lorry and by keeping the motor cycle before the lorry made to stop the lorry. The said Raghu and Nagaraj, questioned the complainant and others as if they hit the detenu's motorcycle. The complainant denied the same and asked his driver to move the vehicle. Immediately the said Nagaraj, got into the lorry and pulled the complainant and the helper from the lorry and the complainant fell down. At that time, one of the associates Raghu got into the vehicle and took away the plastic bag, in which the complainant had kept Rs.1,08,618/- and got down from the lorry and left by getting on to the motor cycle which was kept ready by the detenu. When the complainant caught hold of the legs of Nagaraj, he took out a knife and cut the complainant over his head and kicked on his stomach. When he shouted for help, a huge crowd gathered at the spot for his rescue. On seeing this, the detenu, his associates and the driver Sathish, threatened the public stating that if they apprehend them, they have to face dire consequences and picked up stones from the roadside and pelted the same against the public. The stones scattered all over the road side and the normalcy in that area was totally

dislocated and taking advantage of the panic situation, the detenu, his associates and the driver Sathish escaped from the spot. The complainant was admitted for treatment as inpatient in the Stanley Hospital. On receipt of the said information from the hospital, the Inspector of Police proceeded to the hospital and examined the complainant, and registered a case in Crime No.392 of 2008 on the file of P-5, MKB Nagar Police Station, for an offence punishable under Section 394 IPC. The Inspector of Police visited the spot, prepared observation mahazar and seized the stones scattered on the road side under a cover of mahazar. He recorded the statements of the witnesses. The detenu was arrested on 21.08.2008 at 16.00 hours, whereupon, his confession statement was recorded. The section of law was altered into sections 394, 397 and 120 B IPC. In view of the above, the sponsoring authority, by concluding that the detenu is a habitual offender and has acted 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, sponsored the proposal before the Detaining Authority for passing an order of detention against him. The Detaining Authority, on consideration of the materials placed before him, arrived at a subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order and thus, passed the order of detention against the detenu.

Aggrieved by the same, the present Habeas Corpus Petition is filed.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and perused the materials.

4. Learned counsel for the petitioner submitted that the detention order dated 12.09.2008 is vitiated on the following grounds:

(i) In the grounds of detention pertaining to the ground case, it is stated that the Inspector of Police visited the spot, prepared the observation mahazar and seized the stones scattered on the road side under the cover of mahazar. But, this copy of the mahazar, which was referred to in the grounds of detention order, prepared under Form-95, was not furnished to him. Therefore, due to non-supply of material document, the detenu was not in a position to make an effective representation.

(ii) Though the detenu was arrested on 21.08.2008 at 16.00 Hours, he was produced before the V Metropolitan Magistrate Court, Chennai on 22.08.2008 at 5.50 PM, which

could be evident from the remand report, which is available at page 156 of the booklet. Since the detenu was not produced before the Court within 24 hours from the time of arrest by the sponsoring authority, there is a violation to the rights protected by the Constitution of India.

(iii) It has been stated in the First Information Report pertaining to the ground case that the complainant was attacked by the identifiable unknown persons, but in the accident register copy, which is available at page 16 of the booklet, it has been stated that he was attacked by three unknown persons. This contradiction was not properly considered by the detaining authority before passing the order of detention. Therefore, the detention order is liable to be set aside on the ground of non-application of mind on the part of the detaining authority while passing the order of detention.

(iv) In the first information report pertaining to the ground case, the weapon used by the detenu was described as 'knife'. But in the accident register, available at page 16 of the booklet, the weapon is described as 'Aruval'. The detaining authority without noticing the discrepancy relating to the weapon, passed the detention order.

(v) A reading of the adverse cases and the ground case would show that the allegations made in the said cases would not amount to breach of public peace. Under such circumstance, the subjective satisfaction arrived at by the detaining authority that the detenu has acted in a manner prejudicial to the maintenance of public order is not correct. Hence, on those grounds, the detention order is liable to be set aside.

5. Per contra, the learned Additional Public Prosecutor submitted that,

(i) since a reference has been made with regard to the cover of seizure under Form No.95, it does not mean that the said document was relied upon by the detaining authority to arrive at a subjective satisfaction. Further, under the cover of seizure, only stones scattered on roadside were seized. Hence, the non-supply of said document will not affect the rights of the detenu in making effective representation, particularly, when all the relevant materials pertaining to the ground case and the adverse case were furnished to him.

(ii) With regard to the remand of detenu, it is submitted that though the detenu was arrested at 4.00 PM on 21.08.2008, he was produced before the learned Magistrate on the next day evening by 5.50 PM, it has

been submitted that no doubt, there is a delay of one hour, but this delay of one hour is very insignificant in nature. Further, it is pointed out by the learned Additional Public Prosecutor that though the detenu was brought to the Magistrate Court within 24 Hours, he was produced before the Magistrate after the regular court proceedings were over. Therefore, on this process, there could be a slight delay, which would not affect the fundamental rights of the detenu in any way.

(iii) There is no contradiction in the statement of the complainant between the first information report and the accident register copy. In the first information report, it has been stated that the complainant was attacked by the identifiable, but unknown persons though in the accident register, it is mentioned as three unknown persons and since both are conveying the same meaning, there is no contradiction.

(iv) With regard to the description of weapon in the first information report and the accident register, it is submitted by the learned Additional Public Prosecutor that the correctness of the factual aspect found in the document would not deter the detaining authority in passing the detention order when all the other materials would show that he is a habitual offender.

(v) A reading of the adverse cases and the ground case would show that due to the criminal activities of the detenu, a panic feeling of fear was created in the minds of the public. Therefore, it cannot be said that there is no breach of public order. Hence, the order of detention is sustainable in law.

6. With regard to the non-supply of the copy of seizure mahazar, we are of the view that the detaining authority, on going through the entire materials placed before him pertaining to the ground case registered in Crime No.392 of 2008 only, arrived at the subjective satisfaction and it cannot be said that the subjective satisfaction was arrived at by the detaining authority by solely relying upon Form No.95. As stated by the learned Public Prosecutor, only a passing reference was made in the detention order about the cover of mahazar, which could be inferred by the detaining authority from the other available materials. Therefore, non-supply of the copy of seizure mahazar will not affect the rights of the detenu in making effective representation.

7. Coming to the alleged delay in producing the detenu, we are of the view that though there is a delay of one hour in producing him before the Magistrate, as stated by the learned Public Prosecutor, the entire materials available on record would show that the detenu was brought to the court next day evening and he

was produced before the Magistrate after other court proceedings were over, since normally such miscellaneous works would be taken up after the regular court proceedings are completed. Under such circumstance, we do not find any violation of Constitutional rights, as has been argued on behalf of the detenu. Further, we do not find any contradiction with regard to the version of details of identification of the persons by the complainant in between the first information report and the accident register since both the terms "identifiable, but unknown persons" and "unknown persons", would mean the same. With regard to the contradiction found in the discrepancy of weapon between the first information report and the accident register, we are of the view that the said contradiction found in the documents related to the factual aspect of a cutting weapon and that too, there is no change in the nature of the weapon, since knife and Aruval make no much difference. The correctness of the factual aspect in each of document need not be gone into in detail by the detaining authority when other available materials are sufficient for the detaining authority to arrive at the subjective satisfaction that the detenu is a habitual offender.

8. Further, as stated by the learned Additional Public Prosecutor, all the cases relied upon by the detaining authority would undoubtedly show that the action of the detenu and his associates would have definitely created alarm and a feeling of insecurity in the minds of the people of that area. Further more, the occurrence took place in broad day light in a busy locality creating panic in the locality. Therefore, we are not inclined to accept the submission made by the learned counsel for the petitioner that there was no breach of peace. Under such circumstance, we do not find any force in the submissions made by the learned counsel for the petitioner and hence, for the reasons stated above, the habeas corpus petition is liable to be dismissed.

Accordingly, the habeas corpus petition is dismissed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Dept.,
Secretariat,
Chennai-600 009.

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

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

4. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.C.C. Chellappan, Advocate, SR. 7240

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