T.V. Saravanan @ S.A.R.Prasana ... vs State Through Secretary And Another on 16 February, 2006

Author: B.P. Singh

Bench: B.P. Singh, Altamas Kabir

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           CASE NO.:
Appeal (crl.)  1176 of 2005

PETITIONER:
T.V. Saravanan @ S.A.R.Prasana Venkatachaariar Chaturvedi

RESPONDENT:
State through Secretary and another

DATE OF JUDGMENT: 16/02/2006

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:
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J U D G M E N T B.P. SINGH, J.

This appeal by special leave is directed against the judgment and order of the High Court of Judicature at Madras, Chennai in H.C.P. No. 34 of 2005 whereby the High Court dismissed the habeas corpus petition filed by the appellant and upheld his detention under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas Immoral Traffic Offenders and Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) (hereinafter referred to as 'the Act'). The detaining authority finding the appellant to be a 'goonda' under the provisions of the Act and there being a compelling necessity to detain him in order to prevent him for indulging in such further activities in future which were prejudicial to the maintenance of public order passed the impugned order of detention on 15th December, 2004.

The appeal came up for hearing before us on December 13, 2005. Since the order of detention was coming to an end on December 14, 2005 we heard the counsel for the parties and while allowing the appeal set aside the order of detention and directed the release of the appellant. We hereby give the reasons for our order made on December 13, 2005.

The appellant was detained by an order passed in exercise of powers conferred by sub-section (1) of Section 3 of the Act on the ground that he was a 'goonda' within the meaning of the Act and that there was a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which were prejudicial to the maintenance of the public order. The grounds of detention disclose that there were as many as 7 cases registered against the appellant.

The complaints in those cases disclosed that the appellant claiming to be a spiritual mentor attracted large number of followers including females. In one case he had exploited the wife and the elder daughter of the complainant sexually and had also abducted his wife and daughter. In another case it was alleged that he cheated the wife of the complainant of jewellery worth Rs. 6,00,000/- promising to cure her of cancer, and it was later discovered that she was not suffering from any such ailment. Similarly on various false assurances given to other complainants he had deprived them of substantial sums of money taking advantage of the faith reposed in him by them as a spiritual person.

Before the High Court it was submitted on behalf of the appellant that the instances given in the detention order, at best, created a problem of law and order and did not in any manner adversely affect public order. The allegations were to the effect that taking advantage of the faith reposed in him, he cheated many of his followers of substantial amounts making false promises and giving false assurances. In one case there was also an allegation of sexually exploiting the wife and daughter of the complainant. These instances did not raise question of public order as the acts complained of were directed against particular individuals which did not disturb the society to the extent of causing a general disturbance of public tranquility. The acts did not cause disturbance of the public order at all.

The High Court negatived the contention and held that the grounds of detention disclose that the appellant had indulged in shocking and illegal activities which would be detrimental to the maintenance of public order. The subjective satisfaction of the detaining authority was well founded.

Before us the same submission was advanced as was advanced before the High Court. However, Shri K.T.S. Tulsi, learned Senior Counsel appearing for the appellant, in addition to the aforesaid submission, advanced a second submission that in the facts and circumstances of the case, as is evident from the record itself as well as the order of detention, the appellant was already in custody when the order of detention was passed. There was no imminent chance of his being released on bail and yet the detaining authority, even in the absence of any material to raise an apprehension that he may be released on bail in near future and continue with his nefarious activities, passed the impugned order of detention. In our view having regard to the material on record it is not necessary to consider the first ground of challenge, since the second ground of challenge must succeed. It may be useful to notice the relevant part of the detention order which deals with this aspect of the matter. It reads as follows :-

> ":I am aware that Thiru Venkata Sravanan @ S.A.R. Prasanna Venkatachariyar Chaturvedi is in remand in Central Crime Branch Nos. 582/2004, 592/2004, 594/2004, 598/2004, 601/2004 and 602/2004 and a bail application was moved before the Principal Sessions Court in Crl. M.P. No. 11163/2004 in Central Crime Branch Crime No. 582/2004 and the same was dismissed on 17.11.2004. Further a bail application was moved before the Hon'ble High Court, Madras in Crl. O.P. No. 37011/2004 in Central Crime Branch Crime No. 582/2004 and the same was withdrawn on 3.12.2004. He has not moved any bail subsequently. However, there is imminent possibility of his coming out on bail by filing another bail application

> before the Principal Sessions Court or Hon'ble High Court since in similar cases bails are granted by the Principal Session Court after a lapse of time. If he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order."

The question is whether on the basis of such material, an order of detention was justified, even though the appellant was in custody on the date of issuance of the order of detention. The principle in this regard is well settled. In Rameshwar Shaw vs. District Magistrte, Burdwan and another : AIR 1964 SC 334 this Court observed :-

> "12. As abstract proposition of law, there may not be any doubt that s. 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail. . Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.
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> The principle was further elucidated in Binod Singh vs. District Magistrate, Dhanbad, Bihar and others : (1986) 4 SCC 416 in the following words :-
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> "7 It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens."

In Kamarunnissa vs. Union of India and another : (1991) 1 SCC 128 this Court observed :-

> "13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the

> authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court."

Apart from these decisions learned counsel for the appellant also placed reliance on the decisions reported in - Rajesh Gulati vs. Govt. of NCT of Delhi and another : (2002) 7 SCC 129 ; K. Varadharaj vs. State of T.N. and another : (2002) 6 SCC 735 ; Amritlal and others vs. Union Govt. through Secretary, Ministry of Finance and others : (2001) 1 SCC 341 ; Rivadeneyta Ricardo Agustin vs. Government of the NCT of Delhi and others : 1994 Supp (1) SCC 597 and Abdul Sathar Ibrahim Manik vs. Union of India and others : (1992) 1 SCC 1.

It is not necessary for us to notice all the decisions cited before us because we find that the principle enunciated by this Court in Rameshwar Shaw vs. District Magistrte, Burdwan and another (supra) Binod Singh vs. District Magistrate, Dhanbad, Bihar and others (supra) Kamarunnissa vs. Union of India and another (supra) have been applied to the facts and circumstances of the cases cited before us by Shri Tulsi. The principle is well settled and all that has to be seen is whether in the facts and circumstances of this case the tests laid down by this Court are satisfied.

The order of detention itself notices the fact that the appellant had moved an application for grant of bail before the Principal Sessions Court which was rejected on November 17, 2004. The appellant had moved another bail application before the High Court which was withdrawn on December 3, 2004. The detaining authority noticed that the appellant had not moved any bail application subsequently but it went on to state that there was imminent possibility of appellant's coming out on bail by filing another bail application before the Sessions Court or the High Court since in similar cases bails are granted by the Sessions Court after a lapse of time. The order of detention was passed on December 15, 2004 i.e. merely 12 days after the dismissal of the bail application by the High Court. There is nothing on record to show that the appellant had made any preparation for filing a bail application, or that another bail application had actually been filed by him which was likely to come up for hearing in due course.

A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati vs. Govt. of NCT of Delhi and another (supra). This Court noticing the facts of the case observed :-

> "13. In this case, the detaining authority's satisfaction consisted of two parts-one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that "bail is normally granted in such cases".

When in fact the five applications filed by the appellant for bail had been rejected by the Courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was "imminent possibility" that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the "normal" rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. [See: in this context Ramesh Yadav v. District Magistrate : (1985) 4 SCC 232].

We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the Courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenue was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated December 13, 2005.