Kosalai vs The Secretary To Government on 8 September, 2014

Bench: S.Manikumar, V.S.Ravi

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2014

CORAM
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD) No.630 of 2014

Kosalai .. Petitioner

versus

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

2. The District Collector and District Magistrate,
Kanyakumari District
at Nagercoil. .. Respondents

Petition filed under Article 226 of the Constitution for the issuance of a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 2nd respondent, vide P.D.No.3 of 2014, dated 03.04.2014 and set aside the same and consequently, direct the respondents to produce the detenu, namely, Suthan, Son of Sundarsingh, aged about 24 years, before this Court, who is detained at Central Prison, Palayamkottai and set him at liberty.

!For petitioner : Mr.K.P.Narayanakumar
^For respondents : Mr.C.Ramesh
Addl. Public Prosecutor

:ORDER

(Order of the Court was made by S. MANIKUMAR) Mother of the detenu, Suthan, branded as Goonda, vide order in P.D.No.3 of 2014, dated 03.04.2014, has filed the present Writ of Habeas

Corpus.

2. The detenu has come to adverse notice in Kottar Police Cr.No.868 of 2010, dated 07.07.2010, for the offences, under Sections 147, 148, 149, 120-B, 341, 294(b), 302, IPC r/w 3(1) of TNPP(D&L) Act 1982 @ 147, 148, 294(b), 341, 302, 120-B IPC & 3(1) of TNPP(D&L) Act. The date of occurrence is 07.07.2010 at 18.30 Hours, in which, one Manikandan @ Iyappan has been murdered. The detenu, Suthan, has been arrested and lateron, released on bail on 13.10.2010, vide order in Crl.M.P.No.4377 of 2010. In the abovesaid Crime, charge sheet has been filed on 02.04.2013 and is P.T in PRC.No.8 of 2013, in Judicial Magistrate No.I, Nagercoil.

3. The detenu has come to adverse notice in Kottar Police Cr.No.85 of 2012, dated 16.01.2012, for the offences, under Sections 147, 148, 342, 302 IPC @ 147, 148, 341, 342, 302 IPC r/w.149 IPC. The date of occurrence is 16.01.2012 at 15.30 Hours, in which, one Tr.Satheesh Kumar has been murdered. The detenu, Suthan, has been arrested and lateron released on bail on 17.04.2012, vide order in Crl.M.P.No.1229 of 2012. In the abovesaid Crime, charge sheet has been filed on 13.07.2012 and is P.T in PRC.No.7 of 2013, in Judicial Magistrate No.II, Nagercoil.

4. Again, the detenu is alleged to have involved in Suchindrum Police Cr.No.729 of 2012, for the offences, under Sections 147, 148, 324, 307, 302 IPC @ 147, 148, 120-B, 109, 302, 307 IPC. The date of occurrence is 27.09.2012, about 7.30 P.M. In this case, one Chandra Mohan and a Bar Servant, Ramar, have been murdered. Another person, who tried to save Chandramohan, has been alleged to have been assaulted. In Crl.M.P.No.223 of 2013, the Principal Sessions Court, Nagercoil, has released the detenu on conditional bail on 12.04.2013. Charge sheet has been filed on 29.05.2013 and is P.T in PRC.No.10 of 2013, in Judicial Magistrate No.III, Nagercoil.

5. The detenu is alleged to have involved in Cr.No.432 of 2012, registered in Rajakkamangalam Police Station, for the offences, under Sections 294(b), 387, 307, 506(ii) IPC @ 294(b), 394/397, 506(ii) IPC. In this case, the date of occurrence is 02.10.2012 at 17.30 hrs. The allegation is that the detenu, abused, threatened, assaulted one Suyambulingam with Vettaruval and robbed Rs.100/- from him. Charge sheet has been filed on 16.11.2012 and is P.T. before the I Additional Sessions Court, Nagercoil, in S.C.No.5/2013. The detenu, Suthan, has been arrested and released on conditional bail on 15.04.2013, vide order in Crl.M.P.No.659 of 2013, on the file of Principal Sessions Court, Nagercoil.

6. The detenu has also come to another adverse case in Cr.No.29 of 2014, on the file of Kottar Police Station, for the offences, punishable under Section 436 IPC. It is alleged that on the date of occurrence, ie., 12.01.2014 at 02.30 A.M., the detenu and his two associates, set ablaze a vehicle, Tata Sumo, bearing Registration No.TN 21 Q 6946, belonging to one Radhakrishnan and that the case is under investigation.

7. When the matter stood thus, on 21.03.2014, around 01.30 P.M, one Sathish, S/o.Ravi, was threatened and assaulted with knife, by the detenu, while he was standing in Paruthivilai Bus Stop and robbed Rs.100/- from him. On the basis of the complaint of Sathish, a case in Cr.No.132 of 2014, under Sections 294(b), 387, 307, 506(ii) IPC was registered on 21.03.2014. The detenu has

been arrested on 21.03.2014 and based on the confessional statement, weapon used by him, for the commission of offence, is stated to have been recovered.

8. Taking note of the antecedents of the detenu, the District Collector-cum-District Magistrate, Kanyakumari at Nagercoil, has arrived at the subjective satisfaction that the detenu is involved in notorious activities, like, causing injuries, assaulting persons with deadly weapons, damaging public properties, murder, attempt to murder and threatening the local public, by showing deadly weapons with dire consequences and thus acted in a manner prejudicial to the maintenance of the public order and public peace and recourse to normal law, would not have the desired result, and clamped the detenu, branding him as a Goonda, 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) (hereinafter referred to as ?the Act?). Narration of antecedents, at Paragraphs 4, 5 and 6, extracted from the detention order, is as follows:

> ?4. I am aware that Thiru.Suthan, was arrested on 21.03.2014 and duly produced before the Judicial Magistrate No.I, Nagercoil on the same day at

9.00 pm and remanded up to Judicial Custody upto 04.04.2014 and lodged in District Jail, Nagercoil. So far no bail application was filed on his behalf in this ground case. There is a real possibility of his coming out on bail by filing a bail application before the said Court or Higher Court. If he comes out on bail, he will indulge in such activities, which would be prejudicial to the maintenance of the public peace and public order unless he is detained as a ?GOONDA' under Tamil Nadu Act 14/1982.

5) I am aware that Thiru. Suthan is a notorious rowdy element and he is being watched as rowdy of Suchindraum P.S. Vide H.S.No.5/2010 and he has involved himself in notorious activities, like rioting followed by causing injuries, assaulting human persons with deadly weapons, damaging public properties, murder, attempt to murder and threatening the local public, by showing deadly weapons with dire consequences and there he had acted in a manner prejudicial to the maintenance of the public order and public peace.

6) Hence, I am satisfied that Thiru.Suthan is committing grave crimes and he is also acting in a manner jeopardizing public peace and public order and as such Thiru.Suthan is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. On the materials placed before me, I am satisfied that Thiru.Suthan is a Goonda and there is compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public peace and public order.?

9. Though several grounds have been raised, Mr.K.P.Narayanakumar, learned counsel for the petitioner submitted that when the detenu has not filed any bail application, the opinion of the Detaining Authority, regarding the real possibility of coming out of bail, is imaginary and amounts to non- application of mind. He also submitted that there is no cogent material to arrive at such a decision.

10. In response to the same and inviting the attention of this Court to the periodicity of the crimes committed by the detenu, bails being granted within the period of three months and the recurrence of grave offences, like, murder, attempt to murder, etc., Mr.C.Ramesh, learned Additional Public Prosecutor, submitted that the detenu has obtained bail in four adverse cases in Cr.Nos.868/2010, 85/2012, 729/2012 and 432/2012 and only in one adverse case and ground case, he has not filed any bail application. He further submitted that no sooner, the detenu is released in one adverse case, involving even a serious offence, under Section 302 IPC, within a short span of time, another murder has been committed by the detenu along with his associates. Out of five adverse cases, two cases relate to murder and other two, relate to attempt to murder and one to set ablaze a vehicle.

11. Inviting the attention of this Court to the antecedents of the detenu, learned Additional Public Prosecutor submitted that the detenu has been indulging in the acts, prejudicial to the maintenance of the public peace and public order and recourse to normal law, would not have the desired result, in preventing him from indulging in such activities, and therefore, the detention order has been passed. He therefore submitted that though no bail application was filed in the ground case, the subjective satisfaction arrived at by the Detaining Authority, to brand the detenu as goonda, cannot be said to be erroneous. Likelihood of bail considered by the Detaining Authority, clearly indicates that after some time, there is possibility of coming out on bail. Reliance has been placed on G.Reddeiah v. Government of A.P., reported in 2012 (2) SCC 389. For the abovesaid reasons, he prayed for dismissal of the petition.

Heard the learned counsel for the parties and perused the materials available on record.

12. The detenu, Suthan, has come to adverse notice in the following cases:

Sl.

No. Police Station Cr.No. Section of Law.

Gist of the case and present stage Kottar P.S.Cr.No.868/2010 u/s 147, 148, 149,. 120-B, 341, 294, 302, 341, 294(b), 302 IPC r/2 3(1) of TNPP(D&L) Act 1982 @ 147, 148, 294(b), 341, 302, 120-BM IPC & 391) of TNPP(D&L) Act Dated 07.07.2010 On 07.07.2010 at about 18.30 hrs in front of Rajelekshmij Hospital, Erulappapuram, when one Manikandan @ Iyappan, S/o.Gangadharan, Sivancoil St, Erulappapuram was standing with the car, the accused Thiru.Suthan alogn with his six close associates in a criminal conspiracy, formed themselves armed with deadly weapon, wrong fully restrained, abysed filthy words and assaulted him with Vettaruvals, brutally and caused his death and also damaged the car driven by him to a tune of Rs.50,000/-. On seeing this incident, the public moving along the road and the nearby shopkeepers went to secure the accused but he threatened them showing the Vettaruval. On seeing their ferocious activities, the public ran helter-skelter out of fear and panic. In the midst, the accused went away with the weapons in the vehicle in which they came. On the strength of the complaint Tr.Kutti @ Ramesh S/o.Kangadharan Sivancoil St, Erulappapuram, a case in Kottar P.S. Cr.No.868/2010

u/s 147, 148, 149, 120-B, 341, 294(b), 302 IPC r/w 3(i) of TNPP(D&L) Act 1982 was registered and investigated. The case was charge sheeted u/s 147, 148, 294(b), 341, 302, 120-B, IPC & 3(i) of TNPP(D&L) Act on 02.04.2013 and is P.T. in PRC No.8/2013 before the J.M I, Nagercoil. He filed a bail petition in Crl.M.P.No.4377/2010 before J.M.I. Court, Nagercoil and released on condition bail on 13.10.2010

2.

U/s.147, 148, 342, 302 IPC @ 147, 148, 341, 342, 302 r/w. 149 IPC, Dt. 16.1.2012 On 16.01.2012 at 15.30 Hours one Sathiskumar (23), S/o.Sekar, Opp., to CSI Church, Erulappapuram was proceeding infront of V.N.Colony, South Erulappapuram, the accused Kannan with his close associates formed themselves in to unlawful assembly armed with deadly weapons brutally and murdered him. On the strength of the complaint of Tr.Sekar, Erulappapuram, a case in Kottar PS Cr.No.85/2012, U/s.147, 148, 342, 302 IPC @ 147, 148, 341, 342, 302 IPC r/w.149 IPC, ws registered and investigated on behalf of the accused. A bail petition has been filed in Crl.O.P.No.3293 of 2012 before Madurai Bench of Madras High Court and released on condition bail on 17.04.2012. The case in Kottar P.S. Cr.No.85 of 2012 was charge sheeted on 13.07.2012 and is P.T in PRC.No.7 of 2013, in Judicial Magistrate No.II, Nagercoil.

3. Suchindrum P.S. Cr.No.729 of 2012 U/s.147, 148, 324, 307, 302 IPC @ 147, 148, 120-B, 109, 302, 307 IPC, dated 27.09.2012 On 27.09.2012 at about 7.30 P.M., in Thengampudhur TASMAC Bar, when one Chandra Mohan, S/o.Muthu Nadar, Panikankudieruppu, Thengampudhur was sitting in the bar, the accused Kannan and his 11 close associates formed themselves in to unlawful assembly armed with deadly weapons assaulted and killed him and also killed Bar Servant Ramar who tied to save Chandra Mohan and assaulted one Madhu with Vettaruval with the intention to kill him. On the strength of the complaint TASMAC Bar Cashier Jayakumar a case in Suchindrum PS Cr.No.729/2012 U/s.147, 148, 324, 307, 302 IPC @ 147, 148, 120-b, 109, 302, 307 IPC was registered and investigated. On behalf of the accused, a bail petition has been filed in Crl.M.P.No.174 of 2013 in the District Session Court, Nagercoil and released on condition bail on 09.01.2013. The case in Suchindrum P.S. In Cr.No.729 of 2012 was charge sheeted on 29.05.2013 and is P.T. In PRC.10/2014 in JM.III Court, Nagercoil.

4. Rajakkam,angalam PS Cr.No.432/2012 U/s.294(b), 387, 307, 506(ii) @ 294(b) 394/397, 506(ii) IPC, dated 02/10/2012 On 02.10.2012 at about 17.30 hrs one Suyambulingam S/o/.Thangamuthu, Santhi Nilayam Road, Paruthivilai was standing at Ganapathipuram Junction with his friend Thangasamy. The accused Thiru.Sutham came with deadly weapon and demanded Rs.500/- for his expenses. But the above Suyambulingam was refused to give it, so the accused Thiru.Suthan abused, threatened, assaulted him with Vettaruval and robbed Rs.100/- from him. On the strength of the complaint of Suyambulingam, a case in Rajakkamangalam P.S. Cr.No.432/2012 under Sections 294(b), 387, 307, 506(ii) IPC was registered and investigated. The case was charge sheeted under Section 294(b), 394/397, 506(ii) IPC was registered and investigated. The case was charge sheeted u/s 294(b), 394, 397, 506(ii) IPC on 16.11.2012 and is P.T. before the I Additional Sessions Court, Nagercoil, in SC.No.5/2013. He filed a bail petition before the Principal Sessions Court, Nagercoil,

in Crl.M.P.No.659/2013 and released on conditional bail on 15.04.2013.

5. U/s.436 IPC, dated 12.01.2014 On 12.01.2014 at about 02.30 A.M., at Erulappapuram the accused Kannan and his two associates set ablazed the vehicle bearing Registration No.TN 21 Q 6946 TATA Sumo of one Radhakrishnan, S/o.Elayaperumal, Erulappapuram by using Petrol. On the strength of the complaint of Radhakrishnan, S/o.Elayaperumal of Erulappapuram a case in Kottar P.S. Cr.No.29/2014, U/s.436 IPC was registered. Case is under investigation.

13. Apart from the above, on 21.03.2014, around 01.30 P.M, the detenu is alleged to have threatened one Sathish, S/o.Ravi and assaulted with knife, at Paruthivilai Bus Stop and robbed Rs.1,00/- from him. Based on the complaint from the said Sathish, a case in Cr.No.132 of 2014, under Sections 294(b), 387, 307, 506(ii) IPC, has been registered on 21.03.2014 and it is pending. The detenu has been arrested on 21.03.2014 and remanded to judicial custody upto 04.04.2014.

14. As rightly pointed out by the learned Additional Public Prosecutor, for the first occurrence, that has taken place on 07.07.2010, the detenu has been granted bail on 13.10.2010, in Crl.M.P.No.4377 of 2010, just after three months, from the date of occurrence. In the abovesaid Crime, charge sheet has been filed on 02.04.2012 in PRC.No.8 of 2013, on the file of Judicial Magistrate No.I, Nagercoil. Again, on 16.01.2012, one Tr.Sathiskumar is alleged to have been murdered by the detenu and his close associates. In this regard, a case in Cr.No.85 of 2012, has been registered in Kottar Police Station, for the offences, under Sections 147, 148, 342, 302 IPC @ 147, 148, 341, 342, 302 r/w 149 IPC. This is the 2nd adverse case, where a charge sheet has been filed on 13.07.2012 in PRC.No.7 of 2013, on the file of Judicial Magistrate No.II, Nagercoil. Even before charge sheet has been filed, the detenu has been granted bail on 17.04.2012 in Crl.M.P.No.1229 of 2012, on the file of the Principal Sessions Court, Nagercoil.

15. On 27.09.2012, another occurrence has been taken place, in which, two persons, viz., Chandramohan and Ramar have been killed. In this regard, a case in Cr.No.729 of 2012, has been registered by Suchindrum Police Station, for the offences, under Sections 147, 148, 324, 307, 302 IPC @ 147, 148, 120-B, 109, 302, 307 IPC.

16. Within five days, on 02.10.2012, the detenu has been alleged to have involved in another crime, registered in Cr.No.432 of 2012, by Rajakkamangalam Police Station, for the offences, under Sections 294(b), 387, 307, 506(ii) IPC @ 294(b), 394/397 and 506(ii) IPC. In Cr.No.729 of 2012, the detenu has been released on bail on 12.04.2013, by the Principal Sessions Court, Nagercoil, in Crl.M.P.No.223 of 2013. In Cr.No.432 of 2012, the detenu has been released on conditional bail on 15.04.2013. Only in the last adverse case and ground case, the detenu has not moved any bail application.

17. As rightly pointed out by the learned Additional Public Prosecutor, proximity and potentiality of the detenu in committing offences, which are prejudicial to the maintenance of public order, in quick succession, one after another, whenever he is at large and that too, heinous crimes like murder and other crimes, is clear. Track record of the detenu and the periodicity, in which, he has been granted bail, would make any reasonable man to think that when the detenu has been released, even

in cases, involving grave crimes, like murder, within a short period of custody, there is always a possibility of likelihood of release on bail, after sometime, if bail applications are filed.

18. The subjective satisfaction arrived at by the detaining authority on this aspect, cannot be said to be unreasonable, or beyond the comprehension of any reasonable person. Consideration of the bail orders granted even in grave offences and the habituality and continuity of the offences, even though recourse to normal law is taken, are cogent materials, relevant to arrive at the subjective satisfaction of any reasonable man to think that there is a possibility of coming out on bail, if bail applications are filed. We have addressed this issue, in our recent judgment in Mariappan vs. District Collector and District Magistrate, Tirunelveli District, (HCP.No.244 of 2014, dated 18.08.2014) and the said decision, squarely applies to this case also. Extract of some passages of the said decision would be relevant for this case also.

?83.One of the important factors to be considered by the detaining authority, under the detention laws, is that, recourse to normal law, did not have the desired result of preventing a person from committing acts prejudicial to the maintenance of public order, and such satisfaction should be arrived at, on the basis of antecedents and in such circumstances, the detaining authority should be aware, as to whether, the detenue is on bail or in jail. If he is in custody, then there is a necessity to consider, as to whether there is any likelihood of bail, and the subjective satisfaction should be, as to whether, he would continue to act in a prejudicial manner, in future, if he is allowed to remain at large.

84.Merely because there was pending prosecution and the detenu is already in jail, there is no impediment for his being detained, if the detaining authority is satisfied that, if he is allowed to remain at large, he would indulge in prejudicial to the maintenance of public order. While testing the aspect of subjective satisfaction, arrived at, by the Detaining Authority, Court has to examine, as to whether, the grounds, on which, the Detaining Authority, has reached the subjective satisfaction, are reasonable.

85.Thus while examining, as to whether, the subjective satisfaction, arrived at, by the Detaining Authority, is proper, what is required to be considered, by the Court is, whether, the subjective satisfaction, is based on any pertinent material, existence of which are relevant, for any reasonable person, to arrive at the conclusion, on the aspect of bail also.

86.On the aspect of bail, when the Detaining Authority considers orders of bail, granted in similar cases, then, the order of detention satisfies the test, that the subjective satisfaction arrived at, by the detaining authority is what a reasonable person, could possibly arrive at, on the basis of the materials. Courts cannot substitute its opinion for that of the Detaining Authority. Court can only consider, as to whether the requisite satisfaction arrived at by the detaining authority, is reasonable.

87.Reasonableness is the course, which reason dictates. It may be construed as converse of unreasonableness, the mind of what an ordinary prudent and reasonable man would reach, with regard to the materials. What the Court feels reasonable, while considering an application for bail, either to release a person or not, may not be the same, as what the executive thinks. In the case of

detention, the Detaining Authority, being an executive authority, is not expected to test every material placed before him, with a high degree of evidence, with judicial standards, not only on the aspect of bail, but with respect to all materials placed before him, to arrive at a subjective satisfaction. Purpose of relying on a material, is to arrive at a conclusion, as to whether, the detenu would indulge in acts, prejudicial to the maintenance of public order, and if allowed to remain at large, he would continue to do so. In that context, awareness of the detaining authority, as to whether, the detenu is on bail or in custody, is relevant. Conclusion of likelihood of release, on the basis of relevant material, is a state of mind, as to what a reasonable man, would reach. His satisfaction on the above aspect, should be reasonable, rational and just.

88.If the detaining authority arrives at a satisfaction, on the aspect of possibility of release, on such bona fide satisfaction, the court has to examine as to whether there was any material to arrive at a legitimate and reasonable conclusion. As regards satisfaction, it is only, if the material considered by the detaining authority is that, no reasonable person could be satisfied that the detenue is likely to be released, then, there can be an inference that, irrelevant material has been considered. It is well settled that the test applied to the word, ?reasonable?, in the context of detention laws, should be reasonable satisfaction, with reference to all the materials considered. Reasonable conclusion is arrived at on a definite fact, which is sufficient in the mind of the detaining authority, and it should not be the ipse dixit.

89.Court has to consider, as to whether, the detaining authority has relied on any, inchoate material, while arriving at the subjective satisfaction. While examining as to whether subjective satisfaction has been arrived at, on the basis of rationality, materials that existed, relevancy of the same, can be tested only on the anvil of reasonableness. Propensity and potentiality of the person to indulge in activities prejudicial to the maintenance of public order in future, is the primary consideration, for detaining a person under the detention laws.

90.The conclusion of the Detaining Authority that if the detenu is allowed to remain at large would continue to indulge in acts, prejudicial to the maintenance of public order and recourse to normal law, did not have the desired effect of preventing him from doing such acts, is the foundation of basic facts and therefore, the Detaining Authority is obligated to consider the possibility of the detenue, coming out on bail and continue to indulge in such acts. Such a satisfaction is based on the materials considered.

91.Proximity of the antecedent activities, effect on the detenue, when recourse to normal law was taken and ultimately, the decision to prevent him from doing acts prejudicial to the maintenance of the public order, is the foundation.

92.Courts can only examine the grounds disclosed by the detaining authority, as to whether they are relevant to the object, for which, the detention is made (i.e) to prevent him, in future from indulging prejudicial activities. Satisfaction is subjective in nature, and such satisfaction, if based on relevant grounds or facts, cannot be said to be irrational. When detention is passed to prevent a person from indulging in prejudicial activities, jail or bail, is certainly a factor, for arriving at the subjective satisfaction. The subjective satisfaction mainly rests on the antecedents and as to how recourse to

penal law, did not have the desired effect, for preventing him, in future from indulging prejudicial activities.

93.At paragraph 40 in State of Maharashtra and others vs. Bhaurao Punjabrao Gawande, reported in 2008 (3) SCC 613, the Supreme Court held that an order of detention can be challenged on certain grounds, which is reproduced hereunder:-

> ?40. An order of detention can be challenged on certain grounds, such as, the order is not passed by the competent authority; condition precedent for the exercise of power does not exist; subjective satisfaction arrived at by the detaining authority is irrational; the order is mala fide; there is non-application of mind on the part of the detaining authority in passing the order; the grounds are, or one of the grounds is, vague, indefinite, irrelevant, extraneous, non-existent or stale; the order is belated; the person against whom an order is passed is already in jail; the order is punitive in nature; the order is not approved by the State/Central Government as required by law; failure to refer the case of the detenu to the Board constituted under the statute; the order was quashed/revoked and again a fresh order of detention was made without new facts, etc.?

94.It is to be accepted that while arriving at the subjective satisfaction of possibility of bail, there should be cogent material before the detaining authority. Inference should be drawn from the available material on record and it should not be the ipse dixit of the detaining authority. Mere making a statement of likelihood of moving an application for bail and thus, arriving at a satisfaction that there is a possibility of bail, is certainly, different from considering some materials, when a bail application is not filed, filed and pending or dismissed. In this regard, it is the duty of the detaining authority, to apply his mind to the materials considered, as to whether they are relevant, to arrive at the subjective satisfaction.

95.For arriving at the subjective satisfaction, antecedents and nature of the activities carried out by the person, are required to be taken into consideration and it is also well settled that an order of preventive detention is founded on reasonable prognosis of the future behaviour of the person, based on his past conduct, judged in the light of the surrounding circumstances. At the same time, the court is bound to protect the citizen's personal liberty, which is guaranteed under the Constitution.

96.Court is not to consider objectively, as to how imminent is the likelihood of the detenu, in indulging in activities prejudicial to the maintenance of the public order. It is the subjective satisfaction of the Detaining Authority, to arrive at the conclusion. When the overall materials are considered by the detaining authority, then, the Court has to consider, as to whether, detention has been validly made. Whether the materials taken into consideration by the detaining authority, are sufficient or not, to arrive at the conclusion, is not for the court, to decide, by applying an objective test, as it is a matter for subjective satisfaction of the detaining authority. If an investigation is undertaken by the court to examine the sufficiency of the material, for arriving at the subjective satisfaction, then, in our humble view, it would be amounting to substitution of satisfaction, arrived

at by the detaining authority. What is required to be considered by the courts is whether the subjective satisfaction, is duly supported by any material. Relevancy can be tested.

97.It is suffice that the detaining authority is satisfied about the genuineness of the documents, relevant for the purpose of arriving at the satisfaction. He should not consider extraneous matters, and that his decision, should not be unlawful, mala fide, excess of jurisdiction and contrary to the procedure established by law. Subjective satisfaction, should be on the basis of materials, by which a person with a clear mind, would arrive at a reasonable conclusion, as to whether a person should be detained.

98.Subjective satisfaction to prevent a person from indulging in future prejudicial activities inferred from antecedents, is of higher degree, in the matter of enforcement of preventive laws, and which is the basic foundation and foremost requirement, to pass an order of detention. In that context, bail or jail, is another factor to be considered, in relation to the above. Aspect of bail, only supplements the paramount basic conclusion.

99.When prevention laws are based on jurisdiction of suspicion, with reference to the reasonability that is arrived at, on the basis of antecedents, the detaining authority should be given a latitude to consider the possibility of coming out on bail, on the basis of materials, which are relevant.

100.Purpose of considering bail orders, passed in similar cases, is only to arrive at the conclusion, as to whether there is any possibility of the person in custody, be released on bail. At this juncture, we are conscious of the fact that there cannot be any absolute immunity, to the order passed by the detaining authority, but we only to wish reiterate that the limitations imposed, should be, to find out, as to whether, materials considered by the Detaining Authority, are relevant or not. If the detaining authority is precluded from considering the possibility of the person coming out on bail, by taking note of the bail orders passed in similar cases (i.e) in respect of similar offences, then we wish to state that, his wings would be clipped. The question is not sufficiency or adequacy, of the material, but relevancy. If relevancy has to be considered as, ?sufficiency or adequacy?, by closer scrutiny, with judicial approach and by applying judicial standards, when an application for bail is normally considered by Courts, vis-a-vis, the detaining authority, who exercises executive functions, and in exercise of judicial review, if the grounds of subjective satisfaction is tested with judicial standards, then, in our humble view, it may lead to substitution, which the Courts have consistently avoided.

101.Subjective satisfaction should be based on the existing material, relevant, to arrive at a satisfaction. If the Detaining Authority, with a clear application of mind to the documents, without any mala fide intention, without reference to any extraneous matters, takes into consideration materials, which have a bearing and passes an order of detention, then the materials considered by the detaining authority, cannot be wholly excluded.

102.When preventive laws are based on ?jurisdiction of suspicion? and when subjective satisfaction is arrived at, with reference to reasonability, on the basis of antecedents and when the Detaining Authority has bonafidely intended to prevent a person, from indulging in acts, prejudicial to the

maintenance of public order, then the detaining authority should be given a latitude to consider the materials, which are relevant, to assess the possibility of the detenue, coming out on bail. But such materials should germane, relevant, not vague, extraneous, indefinite, and non-existent. The jurisdiction to interfere with the subjective satisfaction of the Detaining Authority, should be limited and it should not, in effect convert, ?relevancy of the material considered by him?, into ?sufficiency or adequacy?.

103.It is one thing to state that the detaining authority has considered a material, which is totally irrelevant, and another, to observe that the material considered by him, is not sufficient to arrive at the conclusion. Material considered, may not be adequate or sufficient, but still, it could be relevant. Court cannot predict, as to what material, the detaining authority is expected to consider, as relevant. But that can be tested.

104.When the detaining authority has considered the issue, as to whether there is a possibility of the detenue of release, by considering the previous orders passed in similar cases, then, the same cannot be discarded, by holding that the detaining authority has prejudged or predetermined the issue, on bail. Detention order is the final outcome of considering all the materials placed before the detaining authority and when the order is questioned, then the limitation on the Court, should be with reference to the reasonableness, real and genuine satisfaction.

105.In a given case, if bail application is pending, there can also be a contention that the said bail application can be opposed and therefore, there is no need to pass an order of detention.

106.In yet another case, even if bail is granted still, it could be still argued that the Investigating Officer, may seek for cancellation of bail, instead of invoking the preventive law. But the point to be considered before detaining a person, is whether the detaining authority was aware, as to whether, the person against whom detention order is passed, is in judicial custody or not, whether the acts committed by him, are prejudicial to the maintenance of public order and whether such a person, if allowed to be remain at large would continue to commit such acts, in future, whether there was any compelling necessity and therefore, he must be prevented.

107.Therefore, the first and foremost consideration in the two parts of the subjective satisfaction is, (1) prevention of crime, and (2) the detaining authority should be aware, as to whether, the person against whom, detention is passed, is in judicial custody or not. Power to pass an order, stem from the satisfaction of the detaining authority, with respect to a person, with a view to prevent him, from indulging in activities, prejudicial to the maintenance of public order. Therefore, it is not for the Court to sit in judgment over the subjective satisfaction of the detaining authority and to consider whether the materials are sufficient or adequate, for making an order of detention.

108.Scrutiny should be restricted, as to whether, material exists and whether they are relevant, for a reasonable man, to take into consideration and arrive at a reasonable conclusion. While examining the correctness of the detention, the paramount consideration should be to test whether the decision taken by the detaining authority is to achieve the object and that the same should not be ignored, limiting the scrutiny only to the aspect of bail. Likelihood for bail, without there being any material

would certainly be a sweeping bald statement, or in other words, a ipsi dixit statement. When relevant materials are considered, then, in the humble opinion of this Court, it cannot be said that, interference drawn by the detaining authority is extraneous. When the object of the Act, being to prevent a person from indulging in activities, prejudicial to the maintenance of public order, and the authority, is only an executive, then, the standards applied to test relevancy, should be limited only to subjective standards, to which a reasonable man, could arrive at, on the basis of materials.

109.A document can be said to be relevant and material in a given case, when it is likely to bear an opinion on the detaining authority, in one way or another. What is relevant is decided by logical and experience. Standard and degree of test is different, if sufficiency has to be considered. Relevant in detention laws, should be construed to mean, logically connected and having a tendency in the mind of the detaining authority to take into consideration, for invoking detention. That which persuades a reasonable man to think about the probability or possibility or both, as to whether the detenu would indulge in prejudicial activities, if he is allowed to remain at large. Adequacy or sufficiency of reasons, are distinct from relevancy. Relevancy must relate to the standards of belief of a reasonable man.

110.Determination on the aspect of bail, in our humble opinion, should not, outweigh the subjective satisfaction on the possibility of recurrence of crime, if the person is allowed to remain at large. Judicial review should be restricted to consider, as to whether, there are relevant materials, to support a decision. When preventive law is invoked, the test should be reasonableness, and Courts have to address, as to whether, there is a reasonable nexus, to the grounds, and the material considered, by the detaining authority. An order of detention can be set aside, if there are no materials, but if materials are considered, then the sufficiency or adequacy, should not be gone into by the Court. If the subjective satisfaction arrived at, by the detaining authority, satisfy rationality, logic, reasonableness, nexus, to the ground and documents, then, in the light of the object, sought to be achieved under the Preventive Laws, interference with the subjective satisfaction, should be limited.

111.The Larger Bench of the Supreme Court in Masood Alam vs. Union of India, reported in AIR 1973 SC 897 (Three Judges Bench), held that, if the detaining authority is of the opinion on grounds, which are germane and relevant that it is necessary to detain a person from acting prejudicially, then, it is not for the Supreme Court to consider objectively, how imminent is the likelihood of the detenu indulging in prejudicial activities. When contentions were raised regarding detaining a person in custody, the Apex Court held that it is without merit. The Larger Bench of the Apex Court further observed that it has to be borne in mind, that it is always the past conduct, activities or the antecedent history of a person, which the detaining authority takes into account in making detention order.

112.In Khudiram Das vs. The State of West Bengal and others, reported in 1975 (2) SCC 81, (Four Judges Bench), the decision in Machindar vs. King, reported in AIR 1950 SC 129, was considered and the Apex Court observed that the grounds, on which, the satisfaction is based must be, such a rational human being can consider with the fact, in respect of which, the satisfaction is reached. They must be relevant to the subject matter of enquiry and must not be extraneous to the scope and

purpose of the statute. After considering the comparative scope of judicial review, on the grounds of satisfaction, in America, England and India, the Apex Court observed that in England and India, Courts Stop ? Short, at merely inquiring, whether the grounds, on which, the detaining authority has reached the subjective satisfaction, are such that any reasonable person could arrive at such satisfaction. In yet another Three Judges Bench judgment, in Ram Bali Rajbhar vs. State of West Bengal, reported in 1975 (4) SCC 47, the Apex Court, reiterated that the courts have to carefully avoid, substituting our own view about what is enough for the subjective satisfaction of the detaining authorities, with which, inference could be justified, only, if it is clear that no reasonable person could possibly be, satisfied about the need to detain, on the grounds given, in which case, the detention would be in excess of the power to detain.

113. In State of Orissa vs. Manilal Singhania, reported in 1976 (2) SCC 808, a Three Judges Bench Judgement, the Apex Court held that the limited jurisdiction possessed by the High Court was to examine whether the subjective satisfaction reached by the District Magistrate was based on no material at all, or was such no reasonable person would arrive at, on the basis of the material placed before him.

114.In State of Gujarat vs. Kasam Bhaya, reported in 1981 (4) SCC 216, the Apex Court held that,?the High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been based by the detaining authority on materials on record, then the Court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in Section 3 of the Act is the satisfaction of the detaining authority and not of the Court.?

115.In Additional Secretary to Government of India vs. Alka Subash Gadia, reported in 1992 Supp (1) SCC 496, at paragraphs 12 and 13, a Three Judge Bench of the Apex Court, held as follows:-

> "12. This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the detention ? punitive or preventive ? is shown to have been made under the law so made for the purpose. This is to point out the limitations which the High Court and the Supreme Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and well known, and are self-imposed as a matter of prudence, propriety, policy and practice and are observed while dealing with cases under all laws. Though the Constitution does not place any restriction on these powers, the judicial decisions have evolved them over a period of years taking into consideration the nature of the right infringed or threatened to be infringed, the scope and object of the legislation or of the order or decision complained of, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought etc. To illustrate these limitations: (i) in the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not, as courts of

appeal or revision, correct mere errors of law or of facts; (ii) the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by statute. Where it is open to the aggrieved person to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the writ jurisdiction, permit the machinery created by the statute to be by-passed; (iii) it does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed; (iv) it does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by extraneous considerations or is made in contravention of the principles of natural justice or any constitutional provision; (v) the Court may also intervene where (a) the authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed; or (b) where the authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or (c) where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose; (vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief. If the Court is of opinion that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merits and if the Court finds that there is an infringement of the petitioner?s legal rights, it will grant final relief but will not dispose of the petition only by granting interim relief; (vii) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could not, or by omitting to consider matters which it ought to have, the Court interferes with the resultant order; (viii) In proper cases the Court also intervenes when some legal or fundamental right of the individual is seriously threatened, though not actually invaded.

13. These limitations are not only equally observed by the High Court and the Supreme Court while exercising their writ jurisdiction in preventive detention matters, but in view of the object for which the detention law is enacted and is permitted by the Constitution to be enacted, the courts are more circumspect in observing them while exercising their said extraordinary equitable and discretionary power in these cases. While explaining the nature of the detention law and of the orders passed under it and the scope of the powers of the Court in these matters, this

> Court has often emphasised the distinction between the existence of its wide powers and the propriety and desirability of using them."

116.On the aspect of satisfaction, The Hon'ble Mr.Justice Krishna Iyer, in Sadhu Roy vs. State of West Bengal, reported in 1975 (1) SCC 660, states that the satisfaction though attenuated by ?subjectivity?, it must be real and rational, not random, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctioned phrases. His Lordship has further said that one test to check upon the colourable nature or mindless mood of the alleged satisfaction of the authority is to see, if the articulated grounds are too groundless to induce credence in any reasonable man or too frivolous to be brushed aside as fictitious by a responsible instrumentality.

117.As regards judicial precedents, in Union of India v. K.S.Subramanian, reported in AIR 1976 SC 2433, the Supreme Court, held as follows:

> "The proper course for a High Court is to try to find out and follow the opinions expressed by larger benches of the Supreme Court in reference to those expressed by smaller benches of the Court. That is the practice followed by the Supreme Court itself. The practice has now crystallized into a rule of law declared by the Supreme Court."

118.In The State of U.P., v. Ram Chandra Trivedi reported in 1976 (4) SCC 52, the Supreme Court, at Paragraph 22, held as follows:

> "It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India and Anr. v. K.S. Subramanian [(1977) I LLJ 5 (SC)] to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself."

119.It is also to be noted that when the validity of detention orders were tested in A.K.Gopalan vs. State of Madras, (Six Judges Bench Judgment) reported in 1950 AIR (SC) 27, and Dr.N.B.Khare vs. State of Delhi, (Five Judges Bench Judgment) reported in 1950 AIR (SC) 211, the Constitutional Benches of the Apex Court tested the validity of the legislation and detention orders, on the principles of reasonable restrictions and reasonableness. In our humble opinion, the principle equally applies, when a detention order is tested on the aspect of subjective satisfaction.

120.In the light of the discussion and decisions considered, we are of the humble opinion that the detaining authority cannot be found fault with, if he had considered bail orders passed in similar cases, to arrive at the subjective satisfaction. But the relevancy of the said orders can be examined, on facts and circumstances of each case.?

19. In G.Reddeiah v. Government of A.P., reported in 2012 (2) SCC 389 [Decided on 09.09.2011], in a two Judges Bench judgment, the detenu therein was involved in offences, under the Andra Pradesh Act, 1967, A.P. Sandal Wood and Red Sanders Transit Rules, 1969 and Indian Penal Code. Recourse to normal penal laws, did not have the desired effect. On 10.11.2010, he was released on bail. Immediately, thereafter, he was arrested and detention order was served on 12.11.2009, by the District Collector and District Magistrate, Kadapa, Y.S.R. District under Sections 3(1) and 2 (a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (in short "the 1986 Act") stating that the activities of the detenu were dangerous to forest wealth and forest eco-system and thus, are prejudicial to the maintenance of public order. The order of detention was approved and later on, confirmed. Writ Petition for issuance of Habeas Corpus was dismissed. One of the contentions raised by the learned counsel for the detenu, before the Supreme Court was that on even though the detenu was arrested on 09.10.2010 and released on bail on 10.11.2010, the aspect that the detenu was in custody till 10.11.2010 was neither specifically adverted and considered in the detention order, nor the Sponsoring Authority, placed any material, regarding the same. Adverting to the abovesaid contention, the Apex Court considered the decision in Union of India v. Paul Manickam and Another [2003 (8) SCC 342], wherein, at Paragraph 14, the Apex Court, held as follows:

> ?14.....Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. The point was gone into detail in Kamarunnissa v. Union of India [1991 (1) SCC 128]. The Principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed

> after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

20. At Paragraph 17, in G.Reddeiah's case, on the facts and circumstances, the Supreme Court, further held that it is clear that if the Detaining Authority was aware of the relevant fact that the detenu was under

> the custody from 09.10.2010 and he would be released or likelihood of release or as in this case, released on 10.11.2010 and if an order is passed, after due satisfaction in this regard, undoubtedly, the order would be valid. However, upon consideration of the material on record, the Apex Court observed that the said contention was not raised anywhere.

21. Antecedents make it abundantly clear that the detenu is habitually committing heinous crimes, every time when is at large, despite recourse to normal criminal law is taken. It is not a solitary incident against the detenu, but continuity or habituality in committing the crimes, is per se apparent on the face of record. As stated supra, the detenu has come out on bail, even in a murder case, within the short period of time. Therefore, having regard to the antecedents and the track record, the subjective satisfaction of the District Collector-cum-District Magistrate that the detenu has been involved in notorious activities, like rioting followed by causing injuries, assaulting human persons with deadly weapons, damaging public properties, murder, attempt to murder and threatening the local public, by showing deadly weapons with dire consequences and thus had acted in a manner prejudicial to the maintenance of the public order and public peace and that the recourse to normal law, would not have the desired result, except clamping the detenu, branding him as a Goonda, cannot, at any stretch of imagination, be said to be unreasonable or imaginary, as contended by the petitioner.

22. For the abovesaid reasons, we are of the view that there is no error in passing the order of detention and hence, this Court is not inclined to interfere with the same.

23. In view of the above, this Habeas Corpus Petition is dismissed. No costs.

To

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

2. The District Collector and District Magistrate, Kanyakumari District at Nagercoil.