Jayalakshmi vs State Of Tamilnadu on 16 April, 2024

Author: M.S.Ramesh

Bench: M.S. Ramesh

HCP

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.330 of 2024

Jayalakshmi ... Petitioner

Vs.

1.State of Tamilnadu,
Rep. by the Additional Chief Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 600 007.

3.The Inspector of Police,
P-2, Otteri Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai – 600 066. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of Indi
issue a Writ of Habeas Corpus, calling for the records relating to t
detention order in MEMO No.666/BCDFGISSSV/2023 dated 14.12.2023

passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and
aside the same and direct the respondent to produce the petitioner's

husband THIRU.THIRUVENKADAM S/O.CHANDRASEKAR, aged about 41 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner's husband Thiru.Thiruvengadam S/o.Chandrasekar, aged about 41 years the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar
For Respondents : Mr.E.Raj Thilak, Additional Public Prosecutor assisted by Mr.C.Aravind

ORDER

M.S.RAMESH, J.

AND SUNDER MOHAN, J.

The petitioner herein, who is the wife of the detenu namely Thiruvenkadam, aged about 41 years, S/o.Chandrasekar, has come forward with this petition challenging the detention order passed by the second respondent dated 14.12.2023 slapped on her husband, branding him as "GOONDA" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, https://www.mhc.tn.gov.in/judis Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his arguments on the ground that the Detaining Authority has relied upon the order passed in Crl.M.P.No.5203 of 2023 dated 03.11.2023 and came to the conclusion that in a similar case, bail has been granted and that there is a likelihood of the detenu also to be released on bail. The learned counsel for the petitioner further submitted that the offences in the similar case relied upon by the Detaining Authority and the offences in the ground case are not similar and therefore, there is a non-application of mind on the part of the Detaining Authority.

4. On a perusal of the Grounds of Detention, it is seen that in the order that was relied upon by the Detaining Authority in Crl.M.P.No.5203 of 2023 dated 03.11.2023, the accused therein was enlarged on bail for the offences under Sections 24(1) of COTP Act and Section 328 of IPC, https://www.mhc.tn.gov.in/judis however, in the present case, the offences involved are under Sections 273, 506(ii) IPC r/w 7 & 20(1) Cigarettes and Other Tobacco Products Act, 2003 & Sec.58, 59 of Food Safety and Standards Act, 2006. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind, as the offences mentioned in the similar case and the offences involved in the detenu's case are different. Hence, on the above ground, the Detention Order is liable to be quashed.

5. The Hon'ble Supreme Court, in the case of 'Rekha Vs. State of Tamil Nadu through Secretary to Government and another' reported in '2011 [5] SCC 244', has dealt with a situation where the Detention Order is passed without an application of mind. It was held therein that in cases where, any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, the same would vitiate the Detention Order. It was also held that when the subjective satisfaction was irrational or there was non-application of mind, the order of detention is liable to be quashed.

6. At this juncture, the learned Additional Public Prosecutor placed reliance on a recent decision of the Hon'ble Full Bench of this Court in N.Fathima @ Laila Vs. The State of Tamil Nadu in HCP(MD)No.1121 of 2022 and batch., and submitted that when the Detaining Authority infers that the detenu is likely to come out on bail by placing reliance on a similar case in which bail was granted to the offender therein and even if it is found that the similar case, is not similar to that of the ground case of the detenu, the same would not vitiate the Detention Order.

7. One among the two issues that were referred to the Hon'ble Full Bench is as to “whether non-supply of entire materials or documents pertaining to the similar case that has been referred by the Detaining Authority in the Detention Order, could also be fatal to the Detention Order?”. While answering this issue, the Hon'ble Full Bench had come to the conclusion that such non-supply of entire materials or documents relating to the similar case would not be fatal. We are bound by the said law laid down by the Hon'ble Full Bench.

8. However, while deciding the said question, the Hon'ble Full Bench made an observation that “Even if there is any defect in the comparison of similar case, or arriving at the subjective satisfaction on the likelihood of getting bail, it will not vitiate the detention order”. The Hon'ble Full Bench referred to Section 5-A of the Tamil Nadu Act 14 of 1982 in support of the said observation. The Hon'ble Full Bench observed that this ground is severable and therefore, the detention order that could be sustained on other grounds would not stand vitiated. This observation of the Hon'ble Full Bench, with due respects, may not have precedential value, for two reasons.

9. Firstly, that was not the question referred to the Hon'ble Full Bench for its consideration. The observations in this regard, relating to Section 5-A of the Tamil Nadu Act 14 of 1982, in our view, are therefore not binding and cannot be treated as ratio decidendi. In the case of ADM Jabalpur Vs. Shivkant Shukla reported in (1976) 2 SCC 521, the Hon'ble Supreme Court had held that a decision on a point, not necessary for the purpose of, or which does not fall to be determined in that decision, becomes an obiter dictum. Hence, such a point in the decision, would not be an authority for a proposition which did not fall for its consideration, as held in the case of Zee Telefilms Ltd. And Another Vs. Union of India reported in (2005) 4 SCC 649.

10. Secondly, those observations cannot be reconciled with the judgments of the Hon'ble Supreme Court. The question as to whether detention order can be passed on a person already in custody

came up for consideration, in several decisions. It is now fairly settled that detention orders can be clamped even in respect of persons, who are in custody provided certain conditions are fulfilled and the detaining authority satisfies himself about those conditions. In Rekha Vs. State of Tamil Nadu through Secretary to Government and another reported in 2011 [5] SCC 244, the Hon'ble Supreme Court had observed as follows:

> "27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

11. In Union of India vs. Ankit Ashok Jalan reported in 2020 (16) https://www.mhc.tn.gov.in/judis SCC 185, the Hon'ble Supreme Court held as follows:

> "15. Now so far as the reliance placed upon the decisions of this Court in the cases of Rekha v. State of T.N. ((2011) 5 SCC 244) and T.V. Sravanan v. State ((2006) 2 SCC 664) by the learned counsel appearing on behalf of the detenus is concerned, at the outset, it is required to be noted that on the facts and circumstances of the case, narrated hereinabove, the aforesaid decisions shall not be of any assistance to the detenus and/or, as such, the same shall not be applicable to the facts of the case on hand. Even in the case of Rekha (supra), the decision of the Constitution Bench of this Court in the case of Rameshwar Shaw v. District Magistrate, Burdwan (AIR 1964 SC 334) was not placed before the Court for consideration and therefore this Court had no occasion to consider the said decision. It is also required to be noted that even after considering the decision of this Court in the case of Rekha (supra), which has been heavily relied upon by the learned counsel appearing on behalf of the detenus, in the case of Union of India v. Dimpy Happy Dhakad ((2019) 20 SCC 609), this Court has observed that even if a person is in judicial custody, he can be put on a preventive detention provided there must be an application of mind by the Detaining Authority that (i) the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show whether the Detaining Authority was aware of the fact that the detenu was already in custody; (ii) that the Detaining Authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the Detaining Authority that the detenu is already in

> custody and is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities with the https://www.mhc.tn.gov.in/judis subjective satisfaction of the Detaining Authority."

12. Therefore, even though in Ankit Ashok Jalan's case [cited supra], the observations in Rekha's case [cited supra] were distinguished on facts, the requirement to record the satisfaction that the detenu is likely to come out on bail, was reiterated. This requirement is mandated when detention orders are clamped on persons who are in custody. When such a satisfaction is a pre-requisite, to pass a detention order against a person in custody any infirmity in the satisfaction would certainly vitiate the detention order. Such being the legal position enunciated by the Hon'ble Supreme Court, the observations made by the Hon'ble Full Bench that a defect in the said satisfaction would not vitiate the detention order, cannot be reconciled with the judgments of the Hon'ble Supreme Court.

13. We may also point out that more recently in the case of Ameena Begum v. State of Telangana and Others, reported in 2023 SCC OnLine SC 1106, the Hon'ble Supreme Court had held as follows:

> "27...In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether
>
> (i) the order is based on the requisite satisfaction, albeit https://www.mhc.tn.gov.in/judis subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;
>
> (ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;
>
> (iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;
>
> (iv) the detaining authority has acted independently or under the dictation of another body;
>
> (v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;
>
> (vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

https://www.mhc.tn.gov.in/judis

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to." From the above observations, more specifically in Point (i), it could be seen that if a satisfaction is sine qua non for the exercise of the power, the defect in such satisfaction would vitiate the detention order. Further in the very same judgment, the Hon'ble Supreme Court had held as follows, which is also quoted by the Hon'ble Full Bench.

"74. Much water has flown under the bridge since then. It is no longer the law that an administrative authority is under an obligation to give a reasoned decision only if the statute under which it is acting requires it to assign reasons. On the contrary, it is only in cases where the requirement has been dispensed with expressly or by necessary implication that an administrative authority is relieved of the obligation to record reasons. Further, the presumption of official acts having been validly performed cannot be pressed into service for upholding the period for which the detention would continue if the order of detention itself suffers from an illegality rendering it unsustainable. That apart, the reasoning of no prejudice being suffered by the detenu because a power of revocation/modification is available to the Government would not be of any consolation if such power were not exercised at all. In such a case, the prejudice would be writ large. The decision in Vijay Kumar v. Union https://www.mhc.tn.gov.in/judis of India [Crl.Appeal No.2304 of 2023, decided on 16.08.2023] is, therefore, distinguishable."

14. As stated earlier in order to pass a detention order against a person in custody, the detaining authority must be satisfied that a detenu is likely to be released on bail and on being released on bail, is likely to indulge in same prejudicial activities. When this satisfaction is sine qua non, any defect in such satisfaction would render the detention order illegal. Hence, the observations made by the Hon'ble Full Bench of this Court, regarding severability of the ground under Section 5-A of the Tamil Nadu Act 14 of 1982, cannot be reconciled with the aforesaid judgments of the Hon'ble Supreme Court, which are binding on us. However, the judgment of the Hon'ble Full Bench is certainly an authority for the proposition that non supply of materials relating to the similar case relied upon by the detaining authority, would not vitiate the detention order.

15. In the present case, there is a defect in the subjective satisfaction arrived at by the detaining authority, as regards the detenu coming out on bail, since the offences involved in the similar case relied by the detaining authority, are not similar to the offences in the ground case. Thus, the https://www.mhc.tn.gov.in/judis detention order therefore, suffers from non-application of mind and is vitiated.

16. Accordingly, the detention order passed by the second respondent on 14.12.2023 in No.666/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiruvenkadam, aged about 41 years, S/o.Chandrasekar, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]
16.04.2024

Index: Yes/No
Internet:Yes/No
Neutral Citation: Yes/No
Tsg/hvk/ars

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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To

1.The Additional Chief Secretary,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

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