

Sumathi Vs. State of Tamilnadu

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Court : Chennai

Decided On : Jun-24-2014

Judge : The Hon'Ble Mr.Justice V.Dhanapalan

Appellant : Sumathi

Respondent : State of Tamilnadu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:

24. 06.2014 Coram: THE HON'BLE Mr.JUSTICE V.DHANAPALAN and THE HON'BLE Mr.JUSTICE G.CHOCKALINGAM H.C.P. No.2405 of 2013 Sumathi W/o. Vishnu No:

4706. Kannaki Nagar Chennai 600 097. ... Petitioner -vs- 1. State of Tamilnadu, rep. by the Secretary, Home, Prohibition and Excise Department, Fort St. George, Chennai 600 009.

2. The Commissioner of Police, The Commissioner Office, Egmore, Chennai 600 008. ... Respondents Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus, to call for the records relating to the impugned order in BDFGISSV No:

1052. 2013 dated 19.09.2013 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu

Vishnu, son of Kumar, aged about 26 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty. For petitioner : Dr. G. Krishnamoorthy for M/s. K. Ilayaraja For Respondents : Mr.P.Govindarajan Addl. Public Prosecutor

ORDER

(Order of the Court was made by V.Dhanapalan, J.) The petitioner is the wife of the detenu. The detenu has been branded as a ".Goonda". under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in Memo No.BDFGISSV/1052/2013, dated 19.09.2013.

2. The detenu came to adverse notice in the following cases:- Sl.No.Police Station and Crime No.Sections of Law 1. Tiruchengode Town P.S. Crime No.679/2012 147, 120 (B), 302 r/2 109, 147, 149, 449, 302 and 147, 120 (B) r/w 302 I.P.C.

2. J-11 Kannagi Nagar P.S. Crime No.1685/2013 294 (B), 384, 427, 506 (II) IPC3 In para-3 of the grounds of detention, it is stated among other things that the detenu is also involved in the commission of the offence, which took place on 09.09.2013 morning at about 09.00 hours, which led to the registration of a case by Inspector of Police, J-11 Kannagi Nagar Police Station, in Crime No.1707 of 2013 under Sections 341, 294 (b), 336, 392, 427 and 506 (ii) I.P.C. It is further stated that the detenu was arrested on the same day i.e. on 09.09.2013 at 10.30 hours near Karapakkam Bus Stop and was produced before the Judicial Magistrate Court, Alandur, on the same day and remanded to judicial custody till 23.09.2013. The detaining authority, on being satisfied upon the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention. Challenging the said order, petitioner is before this Court in this habeas corpus petition.

3. Dr. G. Krishnamurthy, the learned counsel appearing for the petitioner, would attack the impugned order of detention on the following grounds :- 1.The copy of the complaint alleged to have been given by one Saravanan, which led to the registration of the ground case in Crime No:

1707. of 2013 by the J-11 Kannagi Nagar Police Station had not been furnished to the detenu. 2. In the copy of the F.I.R. furnished to the detenu there is no signature. 3. In the special report, there is a mention that the relatives are taking steps to bail out the detenu for which no supporting material is produced by the sponsoring authority, and 4. There is unexplained delay in considering the representation submitted by the detenu on 12.04.2014. Elaborating his submissions, Dr. G. Krishnamurthy submits that non furnishing of the very copy of the complaint in the ground case to the detenu coupled with the fact that there is no signature found in the copy of the First Information Report raises a very serious doubt about the registration of the ground case as alleged by the respondents. According to the learned counsel, the detaining authority has not noticed the fact that the complaint is not enclosed in the relevant materials and had passed the detention order in a mechanical way. Similarly, learned counsel submits that as to the mention made by the sponsoring authority in the special report that the relatives are taking steps to bail out the detenu, there are no supporting materials and on this ground also the detention order is vitiated in law. Lastly, according to the learned counsel appearing for the petitioner, there is unexplained delay on the part of the authorities in considering the representation submitted by the petitioner on 12.04.2014 and for all these reasons the detention order is vitiated in law.

4. Mr. P. Govindarajan, learned Additional Public Prosecutor would submit that the detenu cannot have a grievance that the copy of the complaint was not furnished to him because in the First Information Report itself the complaint lodged by one Saravanan in the ground case had been reproduced and therefore, no prejudice had been caused to the detenu by non furnishing of the copy of the complaint made in the ground case. Learned Additional Public Prosecutor would submit that the detaining authority has taken into consideration the ground case and the two adverse cases registered against the detenu, applied his mind to the provisions of law and arrived at the subjective satisfaction to clamp the order of detention and therefore, it could not be construed that the detention order has been passed mechanically.

5. Learned Additional Public Prosecutor would also contend that in the special report submitted by the sponsoring authority, there is a mention that relatives of

the detenu are taking steps to bail out the detenu by moving the appropriate Court and, therefore, that material itself is clear to come to the conclusion that there are imminent possibilities for the detenu to come out on bail. On the question of delay in disposal of the representation, the learned Additional Public Prosecutor would submit that the delay can be explained as there are holidays in between the date on which the representation was made and the date on which it was disposed of.

6. We have heard the learned counsel on either side and perused the materials made available on record.

7. A bare perusal of the detention order reveals that the detenu had come to the adverse notice of the respondent police in two adverse cases namely, one registered by Tiruchengode Town Police Station in Crime No:

679. of 2012 for offences under Sections 147, 120 (B), 302 r/2 109, 147, 149, 449, 302 and 147, 120 (B) r/w 302 I.P.C. and the other registered in Crime No:

1685. of 2013 by J-11 Kannagi Nagar Police Station for offence under Sections 294 (B), 384, 427 and 506 (II) I.P.C. The ground case came to be registered on 09.09.2013 by the Inspector of Police, J-11 Kannagi Nagar Police Station in Crime No:

1707. of 2013 for offences under Sections, 341, 294 (b), 336, 392, 427, 307 and 506 (ii) I.P.C. The detaining authority, after a careful perusal of the material documents produced by the sponsoring authority and on being satisfied that the detenu is habitually committing crimes and is acting in a manner prejudicial to the maintenance of Public Order, clamped the detention order thereby branding the detenu as a Goonda as contemplated under Section 2 (f) of the Tamil Nadu Act 14 of 1982. Regarding the first contention of the learned counsel appearing for the petitioner that non furnishing of the copy of the complaint would render the detention order vitiated, it is seen that the First Information Report includes the complaint made by one Saravanan in detail and thereby, the nature of offence committed by the detenu and the other details are available in the said report. Therefore, as rightly put forth by the learned Additional Public Prosecutor, the non furnishing of the copy of the complaint would not deprive the detenu from having

any material information about the crime registered in the ground case as such complaint is available in the form of a First Information Report. On the ground raised viz. the detaining authority has passed the impugned order in a mechanical way without applying his mind, we could see that the detaining authority has applied his mind to the extent possible and had gone through the entire documents made available on record and then only, in exercise of powers conferred under Sub Section (1) of Section 3 of the Tamil Nadu Act 14 of 1982, arrived at the subjective satisfaction that the detenu is a Goonda and passed the detention order. The facts revealed in paragraph 4 of the detention order makes it clear that the detaining authority has applied his mind before passing the detention order and therefore, it cannot be termed as an order made in a mechanical way.

8. Now, we shall consider the plea of the learned counsel for the petitioner that no supporting materials are placed on record for the detaining authority to state that there was an imminent possibility for the detenu to come out on bail as the relatives of the detenu are taking steps to bail him out. On verification of the booklet, at Page No:

179. the Special Report of the sponsoring authority is enclosed. In that report, the sponsoring authority has stated the following lines :- nkYk; vjphp ghh;itapy; fz;l tHf;Ffspy; \$hkPd; nfhUk; kDf;fs; vjida[k; ,Jtiu jhf;fy; bra;atpy;iy kw;Wk; md;dhUila cwtpdh;fs; nkw;go tHf;Ffspy; \$hkPd; nfhUk; kDf;fis chpa ePjpkd;wj;jpy; jhf;fy; bra;J \$hkPdpy; btspna bfhz;Ltu jf;f eltof;if nkw;bfhz;L tUfpwhh;fs; vd;gij gzpt[lld; bjhptp;Jf; bfhs;fpnwd;/ This material information given by the sponsoring authority by itself is enough for the detaining authority to arrive at a subjective satisfaction that there are every possibilities for the detenu to come out on bail and indulge in such activities prejudicial to the maintenance of public order and this decision arrived at by the detaining authority cannot be said to be a decision without any material on record. Accordingly, we have no hesitation to hold that on the all the aforesaid three grounds, the impugned detention order cannot be said to be unsustainable in law.

9. At the same time, this Court cannot loose sight of the Constitutional right of the detenu provided under Article 22 (5) of the Constitution of India. Article 22 (5) of

the Constitution of India reads as under : "

22. Protection against arrest and detention in certain cases -- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. ". Thus, there exist a mandatory right provided to every citizen of this country when he has been detained, particularly in preventive detention laws, it is always mandatory on the part of the authorities to provide him with all the rights that are available to him, including the right to make a representation to redress his grievance and that constitutional right guaranteed under Article 22 (5) of the Constitution of India should be complied with strictly.

10. In a decision of the Constitution Bench of the Supreme Court, in the case of Jayanarayanan Sukul vs. State of West Bengal, [1970 (1) SCC219, it has been held that, The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities. In Rama Dhondu Borade vs. V.K. Saraf, Commissioner of Police, reported in [1989 (3) SCC173, the Supreme Court has observed as follows : A representation of a detenu whose liberty is in peril should be considered and disposed of as expeditiously as possible; otherwise, the continued detention will render itself impermissible and invalid as being violative of Article 22(5). If any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court. In case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable indeed appropriate for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay. In absence of any explanation, Court cannot wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground

that the enormity of allegations made in the grounds of detention is of a very serious nature as in the present case. 11. With such a settled legal position in mind, when we go through the relevant records produced before us in this case, we could see that the detention order has been passed on 19.09.2013. Petitioner herein, who is the wife of the detenu, has made a detailed representation to the authorities on 12.04.2014, which has been received by the Government on 16.04.2014. On the very same day, remarks were called for. However, the remarks were received only on 29.04.2014. Though the consideration of the representation moved in a snail phase from 16.04.2014 to 29.04.2014, it has moved so fast on 29.04.2014 by showing that the file was submitted on the same day viz. 29.04.2014; the under Secretary, the Deputy Secretary and the Minister dealt with it on 29.04.2014 itself and then the rejection letter was prepared on 06.05.2014. In between 16.04.2014 to 29.04.2014, though 20th, 21st, 26th and 27th of April 2014 are holidays, still there is delay of nine days. There is no explanation forthcoming from the authorities as to the delay of nine days in considering the petitioner's representation.

12. The authorities who are under legal obligation to consider such representation must remember that such representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words as soon as may be occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. Thus, there cannot be any slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

13. For the aforesaid reason, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely, Vishnu, son of Kumar, made in

BDFGISSV No:

1052. 2013 dated 19.09.2013, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is otherwise required in connection with any other case. Index : Yes / No [V.D.P.J.,]. [G.C,J.,]. Internet : Yes / No 24.06.2014 gp V.Dhanapalan, J.

and G.Chockalingam, J.

To 1. The Secretary to Government State of Tamilnadu, Home, Prohibition and Excise Department, Fort St. George, Chennai 600 009.

2. The Commissioner of Police, The Commissioner Office, Egmore, Chennai 600 008.

3. The Public Prosecutor High Court, Madras Order in H.C.P.No.2405 of 2013 Dated:

24. 06.2014

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