

Senthil Kumar (A) Senthil Vs. State of Tamil Nadu Rep. by Its Secretary to Government, Home Prohibition and Excise Department and the Commissioner of Police

Senthil Kumar (A) Senthil Vs. State of Tamil Nadu Rep. by Its Secretary to Government, Home Prohibition and Excise Department and the Commissioner of Police

SooperKanoon Citation : sooperkanoon.com/773876

Court : Chennai

Decided On : Jan-06-2009

Reported in : 2009CriLJ1243; (2009)2MLJ482

Judge : Elipe Dharma Rao and ;S. Tamilvanan, JJ.

Acts : 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 - Sections 3(1); Immoral Traffic Prevention Act - Sections 3(2), 4(1), 5(1), 6(1) and 7(1)

Appeal No. : Habeas Corpus Petition No. 1044 of 2008

Appellant : Senthil Kumar (A) Senthil

Respondent : State of Tamil Nadu Rep. by Its Secretary to Government, Home Prohibition and Excise Department and

Advocate for Def. : N.R. Elango, APP

Advocate for Pet/Ap. : R. Sankarasubbu, Adv. for C.C. Chellappan, Adv.

Disposition : Petition is allowed

Judgement :

ORDER

Elipe Dharma Rao, J.

1. The petitioner, who has been detained as 'Immoral Traffic Offender' 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), has filed this Habeas Corpus Petition, praying to quash the detention order and set him at liberty.

2. It is alleged that the petitioner, under the guise of getting good employment in the export company for good salary, brought poor and innocent girls from Andhra Pradesh with his associates and by keeping them in a locked house, induced and forced them to indulge in prostitution business and also took out a house for rent and is living on the earnings of prostitution.

3. Against the detenu/petitioner besides the ground case, an adverse case has also been reported. Both the adverse case and the ground case are registered for the offences punishable under Sections 3(2)(a), 4(1), 5(1)(a), 6(1) and 7(1) of the Immoral Traffic Prevention Act.

4. Heard Mr. R. Sankarasubbu for the petitioner and Mr. N.R. Elango, Additional Public Prosecutor for the State.

5. The detention order has been challenged on various grounds. The main ground of attack to the detention order by Mr. R. Sankarasubbu, learned Counsel appearing for the petitioner, is that in the grounds of detention, the detaining authority has stated that in the ground case registered in Cr. No. 72/2008 of the Anti Vice Squad Police Station, the Police have rescued a girl namely Devaki @ Mownika Devi, who was kept in a locked room, and produced her before the VI Metropolitan Magistrate Court, Egmore, Chennai and while the accused/petitioner was remanded to judicial custody till 27.6.2008, the rescued girl Devaki @ Mownika Devi was sent to Government Home, Mylapore, but the respondent

Police have not furnished the copy of the order passed by the VI Metropolitan Magistrate, Egmore, Chennai to the detenu to show that the said girl was produced before the Court and sent to the Government Home, Mylapore, Chennai. It has further been submitted on the part of the petitioner that he has specifically requested the first respondent in his representation dated 5.7.2008 to furnish him the copy of the order passed by the VI Metropolitan Magistrate, Egmore, Chennai in the ground case in Cr. No. 72/2008, in respect of production of the said girl Devaki @ Mownika Devi before the Court in the above said case, but the same has not been furnished to him till date and there is no explanation, whatsoever, offered on the part of the respondents, for non-supply of the said document to the detenu, which has prevented the detenu from making an effective representation.

6. It has further been argued on the part of the petitioner that in the 161 Cr.P.C. statement said to have been recorded from Devaki @ Mownika, there was no signature of her's and the special report is signed by the Inspector.

7. On the part of the respondents, Mr. N.R.Elango, the learned Additional Public Prosecutor, would submit that the document, which has been sought for by the petitioner/detenu is not at all an important document and non-supply of the same to the detenu will not vitiate the order of detention. The learned Additional Public Prosecutor would further submit that liberty of an individual has to be subordinated, within reasonable bounds, to the common good of the people and the interference of the Court to the orders of detention must be an exception rather than the rule. In support of his contentions, the learned Additional Public Prosecutor would rely on a judgment of the Honourable Apex Court in State of Maharashtra and Ors. v. Bhaurao Punjabrao Gawande (2008) 2 SCC (Cri) 128, wherein it has been held:

The Court must be conscious and mindful of the fact that the jurisdiction to order preventive detention is a 'suspicious jurisdiction' i.e. Jurisdiction based on suspicion and an action is taken 'with a view to preventing' a person from acting in any manner prejudicial to certain activities enumerated in the relevant detention law. Interference by a court of law at that stage must be an exception rather than the rule and such an exercise can be undertaken by a writ court with extreme care,

caution and circumspection. A detenu cannot ordinarily seek a writ of mandamus if he does not surrender and is not served with an order of detention and the grounds in support of such order.

Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black-marketing activities, etc. demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.

In considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity - an unhappy necessity - was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification.

8. On the other hand, the learned Counsel appearing for the petitioner, insisting on the point that non-supply of the documents which are having direct bearing on the detention order, would vitiate the order of detention, has relied upon a judgment of the Honourable Apex Court in *Union of India v. Ranu Bhandari* 2008 (6) Supreme 601, wherein it has been held that 'on account of the non-supply of the documents, detenu prevented from making an effective representation against his detention.'

9. The specific stand of the respondents is that in the ground case, the Police have rescued a girl by name Devaki @ Mownika, who was kept in a locked room at the time of arrest of the detenu and she was also produced before the learned VI Metropolitan Magistrate, Egmore, Chennai, who sent her to Government Home,

Mylapore, Chennai. When the allegation is that the petitioner has induced innocent, poor girls to indulge in prostitution and also forced them into the flesh-trade, not only the fact of rescuing a girl, who is alleged to be in the illegal custody of the petitioner, but also the order passed by the Magistrate, while sending her to the Government Home, after enquiring her, attains vital importance and there cannot be any doubt that such document is a vital document and the detaining authority ought to have supplied the copy of such a document to the detenu. However, in spite of request of the petitioner, no such document has been furnished to him and there is no explanation offered on the part of the respondents, as to why they have not furnished the copy of the said document to the detenu. The non-supply of copy of such a vital document has prevented the detenu from making an effective representation to the authorities concerned.

10. True, individual liberty is subordinate to the common good of the people, as has been held by the Honourable Apex Court in Bhaurao Punjabrao Gawande case (supra), cited by the learned Additional Public Prosecutor. But, if, while passing the order of detention, the basic principles are not adhered to by the authorities, thus depriving the detenu from making effective representation to the authorities, the same will vitiate the order of detention, as has been held by the Honourable Apex Court in its subsequent and latest judgment in Ranu Bhandari's case (supra), cited by the learned Counsel for the petitioner.

11. When the materials placed on record would show that the detenu was prevented from making an effective representation against his detention, the impugned order of detention would get vitiated on this ground.

12. The other ground on which much reliance has been placed on the part of the petitioner is that the initial arrest of the petitioner was not informed to his family members and with regard to the arrest information, the respondent Police have furnished a telegram in the booklet, but the same is not a certified copy and the police have not furnished a telegram receipt and, therefore, on this ground also, the order of detention gets vitiated.

13. For this, no explanation, much less a satisfactory one, is coming forth from the respondents except arguing that the arrest has been intimated to the family

members of the petitioner. In the absence of any valid material on record to substantiate the case of the respondents, we are unable to accept that the arrest of the petitioner was intimated to the family members of the petitioner. Therefore, even on this ground, the impugned order of detention gets vitiated.

For all the above reasons and discussions, we hold that the impugned order of detention is bad in law and, accordingly, this Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com