(2012) 11 MAD CK 0197

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 955 of 2012

Lakshmi Bai Nat	APPELLANT
Vs	
The Secretary to the Government and The In-charge Commissioner of Police	RESPONDENT

Date of Decision: Nov. 22, 2012

Acts Referred:

- Constitution of India, 1950 - Article 22
- Penal Code, 1860 (IPC) - Section 392, 397
- Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 - Section 3(1)

Citation: (2013) 1 LW(Cri) 460

Hon'ble Judges: S. Nagamuthu, J; M. Jaichandren, J

Bench: Division Bench

Advocate: N. Anandakumar, for the Appellant; C. Ramesh, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.
Challenge in this Habeas Corpus Petition is to the Detention Order dated 30.05.2012 passed by the second respondent in his proceedings in C.P.O/TC/IS/D.O. No. 27/2012 by which the second respondent has held that the petitioner is a Goonda and has ordered him to be detained at Central Prison, Tiruchirappalli, u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short "the Act). Though several grounds have been raised in this Habeas Corpus Petition, the learned Counsel appearing for

the petitioner would mainly contend that in the grounds of detention, the Detaining Authority has stated that, in a similar case, registered under Sec. 392 r/w. 397 IPC in Woraiyur P.S.Cr. No. 989/2010 in Cr. MP. No. 1084/ 2010 on 2.6.2010, bail was granted to Thiru Kalidoss by the Sessions Court, Tiruchirappalli. Having referred to the same, the Detaining Authority has further observed as follows:-

5...From this, I draw the inference that it is most likely of his (Basanth Lal) coming out on bail for the above case. If he comes out on bail, he may indulge in such activities again as well, which will be prejudicial to the maintenance of pubic order.

2. The learned counsel would further submit that to arrive at such a conclusion that there was most likely of the detenu coming out on bail, there was no material available on record. The learned counsel would further point out that though it is stated in the grounds of detention that in similar cases, bails are granted by the Courts concerned, the details of such cases, upon which the Detaining Authority had come to the said conclusion, have not been furnished.

3. In this regard, the learned counsel for the petitioner would rely on the Judgment of a Division Bench of this Court in Jothi Vs the Secretary to Government, reported in 2012 (2) LW (Crl) 527 wherein, in identical circumstances, in Paragraph No. 17, the Division Bench has held as follows:-

17. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail. In the present case, It has not been shown that all the relevant materials relating to the similar cases, referred to by the Detaining Authority had been furnished to the detenu, in order to enable him to make an effective representation against the detention order. The failure of the Detaining Authority to furnish all the materials would, no doubt, cause substantial prejudice to the detenu, resulting in the failure on the part of the Detaining Authority in following the mandate, enshrined in Clause (5) of the Article 22 of the Constitution of India.

4. Relying on the above Judgment of the Division Bench, the learned counsel would submit that in the case on hand also, since the materials relating to the similar case have not been furnished to the detenu except bail order copy alone and since the satisfaction arrived at by the Detaining Authority is not based on any relevant materials, the Detention Order is liable to be set aside.

5. Heard the learned Additional Public Prosecutor on the submissions made by the learned counsel for the petitioner.

6. Keeping in view the above legal principles, if we look into the facts involved in the case, there can be no dispute that the detaining authority had come to the conclusion that there is real possibility of the accused coming out on bail and the

said conclusion is based on the fact that in a similar case in Woraiyur P.S.Cr. No. 989/2010, bail was granted to the accused therein. But, it is the contention of the petitioner that relevant documents relating to the said case, such as FIR, Mahazar etc., have not been furnished. To the contrary, only copy of the bail order has been given. In our considered opinion, non-furnishing of all these material documents to the detaining authority and non-consideration of the same would only indicate the total non-application of mind on the part of the detaining authority. The detaining authority in a mechanical fashion only on considering the bail order has come to the conclusion that there is a real possibility of the detenu coming out on bail.

7. The preventive detention is made not by way of punishment, but it is only by way of prevention. Though the same has got constitutional sanction, it pre-supposes adherence to the constitutional safeguards. In this case, the said safeguards, as we have pointed out, have not been complied with. Therefore, the impugned Detention Order is liable to be set aside. Accordingly, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the second respondent, in his proceedings in C.P.O./TC/IS/ D.O. No. 27/2012, dated 30.05.2012, is quashed. The detenu, by name, Thiru. Basanth Lal, aged 45 years, S/o. Bihari Lal, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.