

(2006) 03 MAD CK 0156

Madras High Court

Case No: Habeas Corpus Petition No. 1239 of 2005

Nazine APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision: March 20, 2006

Hon'ble Judges: P. Sathasivam, J; J.A.K. Sampath Kumar, J

Bench: Division Bench

Advocate: P. Venkatasubramanian, for the Appellant; Abudukumar Rajarathinam, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Sathasivam, J.

The petitioner herein challenges the impugned order of detention dated 29.08.2005, detaining her son as Goonda as contemplated under the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982)

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that there was inordinate delay in disposal of the representation of the detenu. With reference to the said contention, learned Government Advocate has placed the details, which show that the representation of the detenu was received by the Government on 26.09.2005, remarks were called for on 27.09.2005 and the same were received on 05.10.2005. The File was submitted on 05.10.2005 and considered by the Under Secretary and Deputy Secretary on 06.10.2005. The Minister for Prohibition and Excise passed orders on 07.10.2005. The Rejection Letter was prepared on 17.10.2005, sent to the Central Prison for service on 18.10.2005 and served to the

detenu on 20.10.2005.

4. Learned counsel for the petitioner, by drawing our attention to the fact that though the competent authority, viz., the Minister for Prohibition and Excise, passed orders as early as on 07.10.2005, there is no justification for taking time till 17.10.2005 for preparation of the Rejection Letter, would contend that, on this ground, the detention order is liable to be interfered with. Learned Government Advocate has brought to our notice that though the decision was taken by the Minister on 07.10.2005, because of the intervening holidays, viz., 8.10.2005, 9.10.2005, 11.10.2005, 12.10.2005, 15.10.2005 and 16.10.2005, the Rejection Letter was prepared on 17.10.2005. According to him, if the intervening holidays are excluded, the time taken by the officers for preparation of the Rejection Letter was only three days, which is permissible as per the earlier orders of this Court. Taking note of the fact that many holidays intervened between 07.10.2005 and 17.10.2005 and in the light of the earlier orders of this Court that three days period in between two stages is permissible and the same cannot be construed as undue delay on the part of the authority concerned, we hold that there is no inordinate delay as claimed by the learned counsel for the petitioner. It is also brought to our notice that, in similar circumstances, excluding the intervening holidays is permissible, vide 2005 9 SBR 459 (Chakravarthy v. State of Tamil Nadu). Accordingly, we reject the contention of the learned counsel.

5. Learned counsel for the petitioner next contended that there was no valid remand order on the date when the detention order was passed. In support of the above contention, he brought to our notice that though initially the detenu/accused was remanded till 26.08.2005 on being produced before the Magistrate concerned, on the remand expiry date, i.e., on 26.08.2005, he was not produced, however, an order was passed by Judicial Magistrate No.IV, Salem, extending the remand till 30.08.2005. According to the learned counsel, in view of the fact that the accused was not produced before the learned Magistrate, the order dated 26.08.2005, extending the remand till 30.08.2005, is not a valid order and this aspect has not been considered by the Detaining Authority.

6. We are unable to accept the said contention for the following reasons. It is not in dispute that by order dated 14.08.2005, Judicial Magistrate No. IV, Salem, on production of the accused, after being satisfied that the accused had no complaint against the police, remanded him till 26.08.2005. The said order is available at page No. 131 of the paper book. It is true that on 26.08.2005, the accused was not produced before the said Magistrate. However, on the basis of the requisition made by the Sponsoring Authority, the learned Magistrate extended the remand till 30.08.2005. In this regard, it is relevant to note that in para No. 3 of the grounds of detention, the Detaining Authority has specifically referred to the fact that on the date of passing of the detention order, that is, on 29.08.2005, the detenu was in remand by the order of the learned Magistrate. In other words, the Detaining

Authority, after taking note of the order of Judicial Magistrate No. 4, Salem, dated 26.08.2005 and the fact that the remand of the detenu was extended till 30.08.2005, passed the impugned order of detention. Hence, we are unable to accept the argument advanced by the learned counsel for the petitioner.

7. Finally, learned counsel for the petitioner, after advertizing to the fact that the bail application dated 22.08.2005, in C.M.P. No. 5233 of 2005, filed on behalf of the detenu in respect of the ground case, was dismissed by Judicial Magistrate No. 4, Salem, on 24.08.2005; and after pointing out the observations of the learned Magistrate, viz., that the accused (detenu) involved in two cases and he is a habitual offender; would contend that, in the absence of any other material, the Detaining Authority is not correct in arriving at a conclusion that the detenu is likely to come out by an order of court.

8. We verified the order passed by the learned Judicial Magistrate. It is true that, by order dated 24.08.2005, the learned Magistrate dismissed the bail application. However, as rightly pointed out, there is no bar in filing a fresh petition before the court concerned or before the appellate court and in that event, it can not be said that the request of the detenu will not be considered. Merely because the learned Magistrate has made some observation about the involvement and conduct of the accused, it cannot be ruled out that his case will not be considered at any point of time. Further, the detention order contains the details regarding four adverse cases as well as the circumstances under which the detenu was detained based on the ground case occurrence dated 14.08.2005. All the materials such as complaint, statement of witnesses and other relevant documents from the Court are available in the paper book. Based on those materials, after finding that ".... If he is let out on bail and he is let to remain at large, he is likely to indulge in such prejudicial activities in future as well...", and after arriving at the subjective satisfaction, the Detaining Authority has passed the order of detention. In such circumstances, it cannot be contended that there was no material before the Detaining Authority for passing the detention order. Thus, we reject the said contention also.

9. In the light of what is stated above, we do not find any valid ground for interference. Habeas Corpus Petition fails and the same is dismissed.