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Madras High Court

Case No: H.C.P. Nos. 2112, 2121 and 2352 of 2013

Banumathy	APPELLANT
Vs	
The State of Tamil Nadu	RESPONDENT

Date of Decision: April 8, 2014

Acts Referred:

- Constitution of India, 1950 - Article 21, 22(5)
- Penal Code, 1860 (IPC) - Section 363A

Citation: (2014) CriLJ 4584

Hon'ble Judges: V. Dhanapalan, J; G. Chockalingam, J

Bench: Division Bench

Judgement

V. Dhanapalan, J.
As the issue involved in all the above Petitions are one and the same, these Petitions are taken up for disposal by a common order. Heard Mr. R. Mohandoss, learned counsel for the petitioner in H.C.P. No. 2121 of 2013; Mr. D. Gopikrishnan, learned counsel for the petitioner in H.C.P. Nos. 2352 and 2112 of 2013 and Mr. P. Govindarajan, learned Additional Public Prosecutor appearing for the respondents/State.

2. The ground on which detention orders are passed against the detenus is a peculiar one, as a L.K.G. student has been kidnapped by them. On a perusal of the detention orders, it is seen that a L.K.G. student, by name, Soorya, studying in Chettinad Vidyalaya, Chennai-28, had been kidnapped by the detenus herein on 08.08.2013. On the same day, Mrs. Anitha, Soorya"s class teacher, made a complaint in E5, Foreshore Estate Police Station. She has stated that as an usual practice either vehicles arranged by the parents or school buses were arranged for picking and dropping the students. On 08.08.2013, at 11.40 hours, one person came to her class to pick the student Soorya and when questioned by her, he informed that he is an alternative driver of Soorya"s vehicle. Since the student Soorya also addressed him as "Anna", believing that the driver is

known to Soorya, Mrs. Anitha sent the child with him. At 12.10 hours, another person, informing that he is the driver of the student Soorya''s vehicle, came to the school and Mrs. Anitha informed him that already a person came to pick the child Soorya at 11.40 hours saying that he is an alternative driver of the vehicle, in which Soorya came to school. The driver of the vehicle informed the same to Soorya''s parents and came to the conclusion that Soorya would have been abducted. The Sub-Inspector of Police, E5 Foreshore Estate Police Station registered a case in Crime No. 833/2013 under Section 363A, IPC and later it was taken up for further investigation by the Inspector of Police, Law and Order, E5 Foreshore Estate Police Station. Though the accused/detenus were arrested, investigation of the case is not yet over.

3. Being satisfied that the detenus are habitual offenders and have acted in a manner prejudicial to the maintenance of public order by kidnapping a child that too in school premises in a broad daylight, the detaining authority clamped the orders of detention against the detenus, thereby branding them as "Goondas" under Section 2(f) of the Tamil Nadu Act 14 of 1982. Aggrieved by the said detention orders, the relatives of the detenus are before this Court seeking to set them at liberty.

4. The Sponsoring Authority has filed a supporting affidavit in H.C.P. No. 2112 of 2013 with reference to D.O. No. 837/2013, stating as follows:

4.1. The materials relied on by the detaining authority in the grounds of detention are insufficient to warrant detention under Tamil Nadu Act 14 of 1982. The detenu Prabhu kidnapped a three and half year old child studying LKG and demanded ransom of Rs. 10 lakhs from the father of the child Thiru. Hariharan, who feared danger to his son, but unable to arrange money and in turn, handed over jewels of about 12 1/4 sovereigns to them and left the child. Further, he and his associates committed robbery of cell phone and cash from one Raji at knife point and acted in a manner prejudicial to the maintenance of public order.

4.2. The detenu Prabhu already came to adverse notice in a case of kidnapping and ransom and in the ground case, he was found acting in a manner prejudicial to the maintenance of public order and a bail application moved for a graver offence is pending. With regard to Ground-C in the affidavit, it is stated that similar orders furnished to the detenu belong to some other accused and not the co-accused. The detaining authority infers from the above similar bail orders that there is every likelihood of the detenu coming out on bail.

4.3. Regarding the contention raised in Ground-E of the affidavit, it is submitted that the petitioner has not stated as to how he was prejudiced for non-furnishing of the remand order in respect of D1 Triplicane Police Station in Crime No. 1148/2013. In fact, the detenu was formally arrested after getting permission from the learned Magistrate and was produced before the learned Magistrate on PT requesting to remand to judicial custody.

4.4. Regarding the contention in Ground-F of the affidavit, it is submitted that non-furnishing of the formal arrest memo to the relatives in respect of D-1 Triplicane Police Station in Crime No. 1148/2013 will not cause any prejudice to the detenu Prabhu, since his arrest in E-5 Foreshore Estate Police Station in Crime No. 833/2013 was informed to his wife, Tmt. Meenakshi, the petitioner in H.C.P. No. 2112 of 2013. It is further submitted that the order of detention was approved by the first respondent with due and proper consideration.

5. Mr. R. Mohandoss, learned counsel for the petitioner in H.C.P. No. 2121 of 2013 would primarily contend that there is delay in disposal of the petitioner''s representation and the remand order relied on by the detaining authority has not been furnished to the detenu. He would go on to add that the detenu is not a habitual offender as contemplated under the Act.

6. On the same line, Mr. D. Gopikrishnan, learned counsel for the petitioner in H.C.P. Nos. 2352 and 2112 of 2013 would contend that there is delay in disposal of the representations sent on behalf of the detenus. Further, he would contend that in the absence of any supporting material, the detaining authority has arrived at a subjective satisfaction that there is a likelihood of moving a bail application by the relatives of the detenus and that the detenus might come out on bail and indulge in activities prejudicial to the interest of the general public.

7. Mr. P. Govindarajan, learned Additional Public Prosecutor would contend that the detenus have committed an offence of kidnapping a child, which is prejudicial to the interest of the public at large, thereby causing threat to the safety and security of school-going children. Therefore, the subjective satisfaction arrived at by the detaining authority, taking note of all the facts and circumstances, could not be interfered by this Court. He would further contend that in view of the decision rendered by the Full Bench of this Court that considering the gravity of the circumstances, even solitary cases are enough to arrive at a subjective satisfaction to detain any person under Act 14 of 1982 and therefore, the detention of the detenus herein is right in the interest of the public at large.

8. The kidnap of an L.K.G. student viz. Soorya by the detenus herein is now under investigation. This Court is much concerned about the gravity of the offence in this case. At the same time, it is for this Court to see that the rights guaranteed under Article 22(5) of the Constitution of India are not violated. Kidnapping of a school going child is not just an offence; it not only takes away the right guaranteed under Article 21 of the Constitution of India; it creates panic among the school going children and their parents as to the safety. The respondents/State should take serious note of this issue and take effective steps in not letting the accused escape by means of loopholes.

9. At the same time, constitutional guarantee to the detenus is of paramount consideration. The detaining authority has to furnish the documents relied on by him to

the detenu, in the manner as contemplated. Time and again, this Court has taken note of non-furnishing of documents to the detenu, which would deprive the constitutional right available to him as also the subjective satisfaction of the real possibility of the detenu coming out on bail. On a verification of the booklet, at page 193, the Remand Report is available. But, there is no remand order passed by the Magistrate concerned. Therefore, non-furnishing of the remand order is one factor which deprives the detenus their right to make an effective representation guaranteed under Article 22(5) of the Constitution of India.

10. On a perusal of the materials available on record, it is further known that the authorities have not taken seriously the consideration of the petitioners'' representation in an appropriate manner, thereby causing inordinate delay, which deprives the right of the detenus guaranteed under Article 22(5). Therefore, the detention orders passed against the detenus are vitiated in law.

11. From the list informing the course of consideration of the petitioner''s representation in H.C.P. No. 2121 of 2013 pertaining to the detenu Chandru alias Chandrasekar, it is seen that the Detention Order was passed on 28.08.2013; the detenu made a representation to the detaining authority on 12.09.2013 and it was received by the competent authority on 13.09.2013 and on the same day, remarks were called for; but, remarks were received on 23.09.2013 and file was submitted to on 24.09.2013 and to the Section Officer on 27.09.2013; on 28.09.2013, the Under Secretary and Deputy Secretary have dealt with it and the Minister (Electricity, Prohibition and Excise) dealt with the same on 30.09.2013 and rejected it on 03.10.2013. Verification of the above dates and events would clearly show that there is unexplained delay of 5 days between 13.09.2013, the date on which remarks were called for and 23.09.2013, the date on which remarks were received, excluding 4 holidays i.e. on 14.09.2013, 15.09.2013, 21.09.2013 and 22.09.2013.

12. The list informing the course of consideration of the petitioner''s representation in H.C.P. No. 2352 of 2013 pertaining to the detenu Senthil alias Senthilkumar alias Vishal would show that the Detention Order was passed on 28.08.2013; the detenu made a representation to the detaining authority on 11.09.2013 and it was received by the competent authority on 18.09.2013 and on the same day, remarks were called for; But, remarks were received on 24.10.2013 and file was submitted to on 24.10.2013 and on the same day, the Under Secretary and Deputy Secretary have dealt with it; on 31.10.2013, the Minister (Electricity, Prohibition and Excise) dealt with it and rejected it on 07.11.2013. Verification of the above dates and events would clearly show that there is unexplained delay of 22 days between 18.09.2013, the date on which remarks were called for and 24.10.2013, the date on which remarks were received, excluding 14 holidays.

13. Further, the list informing the course of consideration of the petitioner''s representation in H.C.P. No. 2112 of 2013 pertaining to the detenu Prabhu would show that the Detention Order was passed on 28.08.2013; the detenu made a representation to

the detaining authority on 02.09.2013; it was received by the competent authority on 18.09.2013 and on 20.09.2013, remarks were called for; but, remarks were received on 23.12.2013 on which day itself, file was submitted; on 23.12.2013, the Under Secretary and Deputy Secretary dealt with the same; the Minister (Electricity, Prohibition and Excise) dealt with the same on 29.12.2013 and rejected it on 02.01.2014. Verification of the above dates and events would clearly show that there is unexplained inordinate delay of 65 days between 20.09.2013, the date on which remarks were called for and 23.12.2013, the date on which remarks were received, excluding 28 holidays.

14. Therefore, it is apparent that there has been an inordinate and unexplained delay in consideration of the representation of the petitioners and the same contradicts the requirement of Article 22(5) of the Constitution of India and the consequence thereof is an infringement of the right of Article 21 of the Constitution of India. Hence, this Court has no other option but to allow these Habeas Corpus Petitions.

15. Accordingly, the impugned detention orders passed by the second respondent in D.O. Nos. 836/2013, 832/2013 and 837/2013, dated 28.08.2013, respectively, are set aside and the detenus namely, Chandu alias Chandrasekar, aged 21 years, Senthil alias Senthilkumar alias Vishal, aged 32 years and Prabhu, aged 32 years are directed to be set at liberty forthwith unless they are required in connection with any other case.

16. While parting with, this Court expresses its anguish over the nature of offence committed in this matter. Whenever the news brings the story of a kidnapped child or teen, the terrifying prospect of abduction fills the minds of parents everywhere. It is important that kids pass through childhood safely. One of the challenges for the parents is to safeguard their children, particularly school-going children from the dangers of being abducted. Kidnapping or abduction of a child not only creates panic in the child''s mind or terrifies the parent, but it is a serious threat to the public at large. Therefore, while dealing with such matters, the authorities of the State should act diligently in preventing the indulgence of the accused in such offences. It is furthermore important that the authorities apply their mind to the seriousness of the issue and the gravity of the offences which are prevalent in the society. They must see that the accused does not escape from the clutches of law on the question of delay in considering their representation or on technical grounds. As such, it is high time the authorities, in matters of this nature, shall act swiftly and strictly in accordance with law, otherwise, the society will lose confidence on them, thereby leading to the filling up of the mindset of the parents of the apprehension of the kidnap of the children. In fine, the Habeas Corpus Petitions are allowed. With the above observations, we make it clear that this order shall not preclude the prosecution from conducting cases effectively and shall not confer any right to the detenu before the Regular Court.