

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 5857/2016

E. SUBBULAKSHMI

PETITIONER (S)

VERSUS

SECRETARY TO GOVERNMENT & ORS.

RESPONDENT (S)

J U D G M E N T

A.M. KHANWILKAR, J.

1. The detenu's mother filed a writ petition in the High Court of judicature at Madras bearing H.C.P. No.117 of 2016 challenging the Detention Order N.1227/BCDFGISSSV/2015 dated 04.12.2015. The principal contention pursued before the High Court was that the typed set of booklet furnished along with the impugned detention order to the detenu was illegible, in particular, the copy of the F.I.R. in respect of Crime No.598 of 2015 dated 18th March, 2015. The High Court negatived the said contention on the finding that the detenu did not make any representation to the

Appropriate Authority nor brought the said fact to the notice of the concerned authority. Further, no such plea was taken in the writ petition. Another contention raised before the High Court that the name of the Judge has not been correctly mentioned in the remand orders supplied to the detenu, has also been rejected by the High Court on the finding that the same can be no ground to quash the detention order. No other contention was pursued before the High Court.

2. In the present special leave petition the petitioner has raised different grounds to challenge the impugned detention order. In the special leave petition and the application for urging additional grounds, following points have been urged, which were reiterated during the course of arguments:

i) The detention order does not mention the specific period for which the same would operate and, therefore, it is vitiated.

ii) There is no record to indicate that the next friend/family member of the detenu was informed about the factum of detention at the earliest opportunity.

iii) The satisfaction recorded by the

Detaining Authority is *inter alia* on the basis of a confessional statement which, however, does not bear the signature of the detenu and, therefore, could not have been relied upon. This has impacted the subjective satisfaction of the Detaining Authority.

iv) Copy of the F.I.R. furnished to the detenu (at page Nos.79-80 of the SLP paper book) is illegible and as a result of which the detenu was denied of an opportunity to make effective representation.

v) The impugned detention order refers to the Government order dated 18th October, 2015 but copy of that document has not been furnished to the detenu, which is fatal to the continued detention of the detenu.

3. Taking the first point urged before us, the same deserves to be stated to be rejected. Inasmuch as the detention order has been issued by the Commissioner of Police in exercise of powers under Section 3(1) read with Section 3(2) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Cyber Law Offenders, Drug

Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (for short, 'the Act of 1982'). The grounds of detention served on the detenu expressly mentions that the detention order shall remain in force for 12 days in the first instance. The proposal for confirmation of detention order was considered by the Appropriate Authority (Deputy Secretary to the Government dated 15th December, 2015 read with the order passed by the Deputy Secretary to the Government dated 29th February, 2016). That makes it amply clear that the detention period would continue up to 12 months. The initial detention order, upon confirmation thereof, would remain in force for a period of 12 months. Thus understood, the ground urged by the petitioner to challenge the detention of her son Murugan S/o. Esakkimuthu Thevar is devoid of merit.

4. Reverting to the second point, even the same deserves to be rejected, inasmuch as the respondents have filed reply affidavit and asserted that after the detention order was executed and the detenu was taken into custody, intimation in that behalf was sent to his brother Venkatesh by registered post on 6th December,

2015. The postal receipt in that behalf is also placed on record. The fact so asserted has not been countered by the petitioner. The intimation sent to the detenu's brother and the memo in that behalf is marked as Annexure R2. Thus, it is not a case of no intimation given to the next friend/family member of the detenu at the earliest opportunity. The petitioner placed reliance on the decision of this Court in the case of D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, in particular paragraph 35 enunciating the procedure to be adopted in all cases of arrest or detention. In clause (4) of the said paragraph it is predicated that the time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. We find force in the submission of the learned counsel for the respondent that the procedure about arrest of a person and sending intimation dealt with by the Supreme Court is essentially in respect of arrest of a criminal and to interrogate him during the investigation. In any case,

in the absence of telegraphic service available, as of now, intimation sent to the family member of the detenu by registered post in addition to the telephonic intimation must be considered as substantial compliance of the requirement. Counsel for the petitioner, however, has placed reliance on the decision of the High Court of Madras in the case of Shanmugam and Another v. State of Tamil Nadu and Another, (2013) 4 MLJ (Cr1) 1. In that case the stand taken by the authority was that intimation was given to the next friend of the detenu over cell phone/land line phone. The Court opined that it is difficult to ascertain the correctness of that position and intimation by land line telephone/cell phone must be eschewed. The Court observed that even if no telegraphic service was available, in such a situation it would be appropriate to send intimation by e-post as introduced by the Department of Posts, Government of India with effect from 30.01.2004. That suggestion has been given in paragraph 25 of the judgment. The fact remains that in the present case intimation was given to the family member of the detenu by registered post as well as on telephone. As observed earlier, substantial compliance of giving information to the family member of the detenu has

been done. Hence, the argument under consideration need not be examined any further.

5. The third ground urged by the petitioner is about the reliance placed on alleged confessional statement given by the detenu during the investigation of the ground case. The fact that no signature of the detenu has been noted on the said confessional statement, it would at best be a ground to discard that document in a criminal trial being inadmissible in evidence. That by itself is not sufficient to question the subjective satisfaction reached by the Detaining Authority. What is also required to be considered is: whether the said voluntary confessional statement was the sole basis to arrive at the subjective satisfaction. On a fair reading of the grounds of detention, we must hold that the said confessional statement is not the solitary document or circumstance considered by the Detaining Authority. The grounds of detention has referred to the F.I.R. in Crime No.2348 of 2015 under Sections 341, 294(b), 323, 384 and 506(II) I.P.C. read with Section 4 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act; and the background in which the said case was registered including the seriousness of the offence. Reliance has

been placed on the fact that during the investigation of the case, the Assistant Commissioner of Police was informed that the detenu who was absconding in the ground case, was apprehended in connection with another crime. After taking orders of the Assistant Commissioner of Police, Thiru N. Elangovan, Inspector of Police, Law and Order, J4 Kotturpuram Police Station arrested the detenu on 2.11.2015 at 21.30 hrs. After his arrest he was brought to Chennai. On 31st November, 2015 at 13.30 hrs. while police party along with the accused were returning to Chennai, opposite to Central Polytechnic the detenu informed that he wanted to attend to nature's call. When he was permitted to go, he pushed the police and jumped a locked gate and tried to escape from the police custody. In his attempt to flee, he fell down on his knee and sustained injuries. The police party after chasing him once again arrested him. They took him to a nearby Government Royapettah Hospital for treatment as out patient. The detenu was later on handed over to the Inspector of Police, J4 Kottupuram Police Station, who in turn recorded the alleged voluntary confessional statement. The grounds of detention also advert to the fact that the detenu was arrested in connection with

other serious offences under Section 294(b), 341, 323, 336, 397 and 506(ii) I.P.C. but was released on bail. The Detaining Authority has recorded his subjective satisfaction that the detenu is likely to be released on bail even in connection with the ground case where he was on remand till 17th December, 2015; and if released on bail, he may indulge in similar prejudicial activities affecting the maintenance of public order. Suffice it to observe that the alleged confessional statement is not the sole basis for forming subjective satisfaction of the Detaining Authority. The Detaining Authority has considered all aspects of the matter and taking totality of circumstances into account deemed it necessary to detain the detenu in exercise of powers under Section 3 of the 1982 Act. Further, the fact that the alleged confessional statement does not bear the signature of the detenu will be of no avail, for doubting the subjective satisfaction recorded by the Detaining Authority. It is well settled that the Court must be loath to question the subjective satisfaction reached by the Detaining Authority. Hence, even this contention also does not commend to us.

6. The next argument pursued by the petitioner is that

the copy of the F.I.R. in Crime No.598 of 2015 dated 18th March, 2015, furnished to the detenu is illegible. Indeed, the said document is a photo copy of the original. The first page of the document, however, gives the necessary description of the offence. The facts which constituted that offence are noted on the second page. The second page of the document is somewhat illegible, being photo stat copy. Significantly, Crime No.598 of 2015 is not the ground case. The ground case is Crime No.2348 of 2015. In that sense, the said F.I.R. at best is a referred to document and not relied upon document. If so, it is not possible to hold that the continued detention of the detenu is vitiated. Counsel for the petitioner, however, placed reliance on the decision of this Court in the case of Abdul Latif Abdul Wahab Sheikh v. B.K. Jha and Another, (1987) 2 SCC 22, in particular, on the dictum in paragraph 5 thereof. In that case, the Court was dealing with the efficacy of procedural requirement and compliances thereof. The Court noted that the procedural requirements are the only safeguards available to a detenu since the Court is not expected to go behind the subjective satisfaction of the Detaining Authority. It went on to observe that the

procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard. There can be no quarrel with this proposition. The question is, whether the F.I.R. in Crime No.598 of 2015 furnished to the detenu is a relied upon document or only a referred to document by the Detaining Authority for arriving at his subjective satisfaction. If it is a relied upon document, the issue must be answered in favour of the petitioner. As aforesaid, we find that the subject F.I.R. is only a referred to document in the grounds of detention.

7. Reliance was placed by the learned counsel for the petitioner on State of Tamil Nadu and Another v. Abdullah Kadher Batcha and Another, (2009) 1 SCC 333. In paragraph 7, the Court observed thus:-

"7. The Court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the document called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (*sic not*) been supplied they cannot by any stretch of imagination be called as relied

upon documents. While examining whether non-supply of a document would prejudice a detenu, the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced."

8. Reliance was also placed on the decision in the case of Senthamilselvi v. State of T.N. and Another, (2006) 5 SCC 676. In paragraph 7 of this decision, the Court observed thus:-

"7. There is also no substance in the plea that the confessional statement of the co-accused was relied upon, but the copy thereof was not supplied. The grounds of detention merely refer to the confession by the co-accused. That does not form foundation for the detention. On the other hand it appears that the detenu himself made a confession and that was the main factor on which the order of detention was founded. There is distinction between a relied upon document and a document which has been referred to without being relied upon. The distinction has been noticed by this Court in Powanammal v. State of T.N., [(1999) 2 SCC 413] SCC at p.417, para 9. It was observed as follows:

"However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the

non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

9. We fail to understand as to how these decisions will be of any avail to the petitioner in the backdrop of the findings recorded above that the copy of F.I.R. furnished to the detenu in respect of Crime No.598 of 2015 is only a referred to document. In the present case, no grievance about the illegible copy was ever made by the detenu to any Authority. Strikingly, the detenu has not made any representation to any Authority much less to assert that the said document is a relied upon document and furnishing of illegible copy was fatal. As a result,

this argument also deserves to be stated to be rejected.

10. That takes us to the last ground urged before us about the non-supply of Government order dated 18th October, 2015. This contention has been raised by way of application for urging additional grounds. During the course of arguments, the counsel for the State produced a copy of the Government Order dated 18.10.2015, the same reads thus:-

"ABSTRACT

Preventive Detention - Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) - Empowering Commissioner of Police, Chennai under sub-section (2) of section 3 of the Act - Orders- Issued.

HOME, PROHIBITION AND EXCISE (XVI) DEPARTMENT

G.O. (D) No.189

Dated: 18.10.2015.

Read:

1. G.O. (D) No.137, Home, Prohibition and Excise (XVI) Department, dated 18.07.2015.

Read also:

2. From the Commissioner of Police, Chennai Letter No.235/S.B.XIII/IS/2015, Dated: 09.09.2015.

ORDER

WHEREAS, the Commissioner of Police, Chennai has reported that the dangerous activities of certain anti-social elements such as Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates, besides endangering life and health of the public are creating alarm and a feeling of insecurity among the general public, and this adversely affect the maintenance of public order;

AND WHEREAS, the Commissioner of Police, Chennai has requested that in view of the aforesaid circumstances now prevailing and likely to prevail in the immediate future in the local limits of Chennai, he may be allowed to exercise the powers conferred by sub-section (1) of section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) by invoking sub-section (2) of section 3 of the said Act.

AND WHEREAS, the Government are also satisfied that having regard to the circumstances now prevailing and the circumstances likely to prevail in the immediate future in the local limits of Chennai it is necessary that the power to make orders detaining persons under sub Section (1) of section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) shall be exercised by the Commissioner of Police, Chennai for a future period of 3 months;

NOW, THEREFORE, in exercise of powers conferred by sub-section (2) of section 3 of the

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), the Governor of Tamil Nadu hereby directs that the power to make orders detaining the Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates under sub-section (1) of section 3 of the said Act shall be exercised by the Commissioner of Police, Chennai in the Chennai City Metropolitan area as specified in the notification issued under section 8 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) for a future period of 3 months with effect from the date of issue of this order.

(BY ORDER OF THE GOVERNOR)

APURVA VARMA
Principal Secretary to Government

To
The Commissioner of Police, Chennai City, Chennai-600 007.
The Director General of Police, Tamil Nadu, Chennai-600 004.
The Additional Director General of Police (Law & Order), Chennai-600 004.
The Commissioner of Prohibition & Excise, Chepauk, Chennai-600 005.
The Principal Chief Conservator of Forests, Chennai-600 015.
The Additional Director General of Police/Inspector General of Prisons, Chennai-600 008.
The Public (Law & Order) Department, Chennai-600 009.
The Deputy Secretary/ Under Secretary, Law Department, Chennai-600 009.
The Home, Prohibition & Excise (IX), (X), (XI), (XII), (XIII), (XIV) and (XV) Department, Chennai-600 009.
S.F./S.C.

//FORWARDED/BY ORDER//

Sd/- 18.10.2015

Section Officer"

11. To examine the correctness of the arguments, we deem it apposite to reproduce the detention order, in which reference is made to the above document. The same reads thus:-

"No.1227/BCDFGISSSV/2015 Dated: 04.12.2015

DETENTION ORDER

Whereas, I, T.K. Rajendran, IPS, Commissioner of Police, Greater Chennai Police, am satisfied that with respect to the person known as Thiru Murugan, male, aged 26, S/o. Easkki Muthu, No.10/23, Subash Street, Thandiarkulam Village & Post, Tirunelveli District is a Goonda as contemplated under section 2(f) of the Tamil Nadu Act 14 of 1982 and that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following order.

Now, therefore, in exercise of the power conferred on me by sub section (1) of section 3 of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with orders issued by the Government in G.O.(D) No.189, Home, Prohibition and Excise (XVI) Department dated 18th October, 2015 and under sub-Section (2) of Section 3 of the said Act, I hereby direct that the said Goonda Thiru

Murugan, S/o. Esakki Muthu be detained and kept in custody at the Central Prison, Puzhal, Chennai.

Sd/-

Commissioner of Police
Greater Chennai Police,
Chennai-7

Given under my hand and seal of this office,
on this 4th day of December, 2015"

12. From the plain language of the impugned detention order, it is seen that the stated Government Order dated 18th October, 2015 is an order issued by the State Government authorizing or delegating power to the Commissioner of Police, Chennai, to issue order under Section 3(2) of the Act of 1982. The question is, whether it was mandatory for the Detaining Authority to supply copy of this Government order to the detenu. The order having been issued in exercise of powers conferred under Section 3(1) of the Act of 1982 and being a statutory order has nothing to do with the grounds of detention. What is imperative is to supply all the documents which are relied upon by the Detaining Authority for forming subjective satisfaction for the purposes of Article 22(5) of the Constitution of India.

The Government order, however, is regarding the delegation of power to the Commissioner of Police to issue detention order. The validity of that order has not been challenged by the petitioner. In other words, the power of the Commissioner of Police, Greater Chennai Police, Chennai to pass a detention order, is not put in issue. The said Government order is not relevant for forming subjective satisfaction by the Detaining Authority. The grounds of detention are about the prejudicial activities in which the detenu had indulged in the past; or in the view of the Detaining Authority the detenu has the propensity to indulge in similar prejudicial activities even in future. That is the quintessence for exercising power to detain any person. Suffice it to observe that the subject document, not being a relied upon document in the grounds of detention or for forming subjective satisfaction by the Detaining Authority, failure to furnish copy thereof to the detenu does not vitiate the action taken by the Detaining Authority nor the continued detention of the detenu. In our opinion, even this submission is devoid of merits.

13. The counsel for the petitioner, relying on the decision in R. Kalavathi v. State of T.N. and Others,

(2006) 6 SCC 14, lastly contended that the subjective satisfaction of the Detaining Authority is founded only on solitary ground case being Crime No.2348 of 2015. According to him, an action under the Act of 1982 can be initiated or resorted to only against habitual offenders and not where it is a case of solitary crime. The argument, though attractive at the first blush, deserves to be stated to be rejected. The ground of detention must be read as a whole. No doubt, it principally relies on the ground case being Crime No.2348 of 2015 but also adverts to other serious offences registered against the detenu and pending trial, such as Crime No.598 of 2015 registered at D.6 Anna Square Police Station; Crime No.3/2015 registered at Aavudaiyar Koil Police Station and including the conduct of the detenu when he tried to escape from police custody. The totality of the circumstances having been taken into account by the Detaining Authority, there is no reason to doubt the subjective satisfaction arrived at for issuance of the impugned detention order, in the fact situation of the present case. Notably, this ground has been urged in the rejoinder submissions. Accordingly, even this contention does not deserve any further consideration.

14. For the above reasons, this petition must fail and is dismissed.

.....J.
[ANIL R. DAVE]

.....J.
[A.M. KHANWILKAR]

NEW DELHI;
NOVEMBER 17, 2016.



JUDGMENT