SUPREME COURT OF INDIA

Dr. Prakash

Vs.

State of Tamil Nadu

Writ Petition (crl.) 66 of 2002

(N.Santosh Hegde and B.P.Singh JJ.)

04.10.2002

JUDGMENT

Santosh Hegde, J.

1. The petitioner who is under detention has preferred this writ petition under Article 32 of the Constitution of India challenging the said detention.

2. While the petitioner was a remand prisoner in Crime No.1466/2001 of Vadapalani Police Station, he was detained under Section 3(1) of the Tamil Nadu Preventive Detention of Bootleggers, Drug-Offenders, (Forest-Offenders), Goondas, Immoral Traffic Offenders and Slum-Grabbers for Preventing their Dangerous Activities Prejudicial to the Maintenance of Public Order, Act (Tamil Nadu Act 14 of 1982), by an order of detention dated 18.2.2002 made by the Commissioner of Police, Chennai, 2nd respondent herein. The main grounds of detention are that the petitioner was indulging in offences under Section 67 of the Information Technology Act, 2000, Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 and under Section 27 of the Arms Act, 1959.

3. On receipt of the detention order in the Central Prison, Chennai, the petitioner informed the detaining authority that he is not able to read and write Tamil, therefore, he is not in a position to effectively represent against the grounds of detention supplied to him. In reply to this letter, the 2nd respondent stated that the statement of the petitioner that he does not read and write Tamil is false. At any rate, to be on the safer side, he supplied to him the copies of the grounds of detention and the annexures enclosed therewith in English. His representation to the detaining authority as also to the State Government (respondent No.1) having failed the petitioner has preferred this writ petition.

4. The first contention raised by the petitioner in this writ petition is that while he was a remand prisoner and before the order of detention dated 18.2.2002 was made by the 2nd respondent, he had written a letter from the jail to the 2nd respondent alleging that the Assistant Commissioner of Police, Vadapalani had demanded a bribe of Rs.5 lacs from him, threatening that if he failed to give the bribe then he would make out false case against him

and arrest him. It is also stated before us that in the said letter the petitioner had complained to the 2nd respondent that because of the said failure to pay the bribe he was falsely implicated and arrested and the said police officer was taking steps to see that the petitioner is not released from the jail. Learned counsel for the petitioner argued before us that it is pursuant to this refusal to pay bribe, the very same officer has sponsored the case of the petitioner for detention under the Tamil Nadu Act 14 of 1982. He further submits from the register maintained by the Jail Superintendent (respondent No.3), that it is clear that this letter of the petitioner had reached respondent No.3, however, he has not taken note of the same while passing the order of detention, consequently his detention order suffers from the vice of non application of mind to vital material. The respondent No.2 in his reply filed before this Court has denied the receipt of any such letter, but since the learned counsel for the petitioner strongly relied on the despatch register of the Central Prison, Chennai, to satisfy ourselves as to this fact we summoned the said register and examined the same with the assistance of the counsel for the parties. After perusing the said register, we notice that there is an entry dated 28.1.2002 in regard to a letter despatched by the 3rd respondent to the 2nd respondent, which the petitioner claims as his letter complaining against the said police officer. Along with the register, we have also received a copy of the letter received by the Commissioner on 28.1.2002 from the 3rd respondent and on perusal of the same it is seen that this letter is written by the respondent no.3 to the 2nd respondent in regard to the arrest of one escaped prisoner Ravi and this letter has nothing to do with the complaint allegedly made by the petitioner to the 2nd respondent. Having perused this material, we are satisfied that the petitioner has not been able to convince us that, as a matter of fact, any such letter dated 28.1.2002 was sent by the petitioner to the 2nd respondent. Therefore, in our opinion, there is no substance in the argument addressed as to the non-consideration of the letter dated 28.1.2002. Hence, the same is rejected.

5. Learned counsel then contended that the sponsoring authority had placed irrelevant and extraneous material before the detaining authority some of which have been considered by the detaining authority, hence, his subjective satisfaction is vitiated by the consideration of irrelevant and extraneous material. In support of this contention, the learned counsel pointed out from the pleadings in the writ petition that the detaining authority has taken into consideration three letters one of which is dated 2.2.2002 written by one Ms.J.Bhanu. The said letter states that the petitioner has indulged in heinous crime, hence the police should take all possible steps to get the petitioner punished and to see that he is not released on bail. A copy of this letter has been furnished to the detenu. The 2nd respondent in his counter affidavit filed before the Court has stated that he has taken note of the contents of this letter. We fail to see how the contents of this letter in any manner is extraneous or irrelevant for the purpose of forming an opinion as to the detention of the petitioner. The argument of the learned counsel is that this is not a letter which was either recovered during the course of investigation or a statement made to the investigating officer, therefore, such letter from a pro bono public is likely to prejudice the mind of the detaining authority. The learned counsel for the petitioner has failed to satisfy us that the detaining authority is not entitled to look into any material which is not collected during the course of the police investigation, even though such material may be relevant for the purpose of forming a subjective

satisfaction. From the contents of this letter, we find these are related to the grounds of detention, therefore, we cannot accept this contention of the petitioner also.

6. The next argument of the learned counsel with regard to the consideration of extraneous material is that, the detaining authority has considered two other letters one of which is dated 14.2.2002 written by one Mrs.Saraswathi and another letter dated 1.1.2002 written by Dr.S.Nagalakshmi to the police authorities. The signatories of these letters claiming to be office bearers of certain women's organisations had pleaded with the police authorities to take steps to see that the petitioner is not released on bail and if the police authorities failed to do so, the members of their association would go on 'Dharna'. In the counter affidavit filed by the detaining authority, he has stated that he has not taken into consideration the contents of this letter. The learned counsel for the petitioner argues that if these letters are not considered by the detaining authority then supply of the copies of this letter along with the grounds of detention would have misled the petitioner in making an effective representation. Therefore, the detention should be held to be invalid. We do not accept this argument either. Mere fact that copies of the some of the materials placed before the detaining authority was included in the list of documents given to the detenu ipso facto does not, in any manner, affect the petitioner's right to make a proper representation against his detention. The contents of this letter, if at all, read by the detenu would not, in any manner, mislead him or would confuse him because the contents of this letter are similar to the letter of Ms.Bhanu and it indicates that the police should take steps to prevent the petitioner from coming out on bail. Therefore, these letters cannot, in any manner, cause confusion in the mind of the detenu. In our opinion, this complaint of the petitioner has to be rejected.

7. The learned counsel for the petitioner then contended that some of the documents referred and relied upon in the grounds of detention have not been supplied to the detenu, hence, there is a non-communication of grounds of detention. In support of this contention the learned counsel relied on the fact that the detaining authority while passing the order of detention has referred to the bail application of the petitioner moved before the 17th M.M.Court, Saidapet, Chennai and also the application for bail filed by the petitioner before the Principal Sessions Court which were dismissed by the said courts, copies of these according to the petitioner, were not supplied to the petitioner because of which the petitioner could not make an effective representation. From the perusal of these documents, it is seen that the detaining authority has made a reference to the same in the course of narration of fact, and he has not based or founded his subjective satisfaction on the contents of the said documents. Therefore, in our opinion, it is not necessary for the detaining authority to give copies of these documents which are only in the nature of narration of facts.

8. The learned counsel then contended that there is a total non-communication of grounds and the order of detention inasmuch as the same is supplied to him in a language not known to the petitioner. He submitted even though some of the copies of the document in Tamil was furnished to him on his demand on 28.2.2002 the same was far beyond the required time period and because of this belated supply of the documents he was prevented from making an effective representation to the detaining authority. In this regard, we notice on receipt of the order and grounds of detention with enclosures, the detenu had written a letter to the 2nd

respondent intimating him of his inability to read and write Tamil. In reply the detaining authority has denied the same immediately. However, he, along with the said letter, has supplied the copies of the said documents on 28.2.2002. It is true that the detaining authority in the order of detention has mentioned that if the detenu so chooses he may make a representation to him before the confirming authority, namely, the State Government confirms his order of detention. The detaining authority in his affidavit before this Court has stated that he received the representation of the petitioner and considered and rejected the same on 4.3.2002. Therefore, it is clear that the petitioner had sufficient time to make a representation to the detaining authority. At this stage, it may be relevant to notice that even though the detenu had no legal right to make a representation to the detaining authority, still the same was given to him and he did use this right, which representation was considered at an early date by the detaining authority and was rejected. By the delay of two days in furnishing the translated copies to the detenu, there was no prejudice caused to the petitioner in making his representation effectively to the detaining authority. In the exercise of his constitutional right the petitioner has made a separate representation to the State Government well within the time allowed, by which time he had received the translated copies. This representation was considered and rejected by the State Government. Though the petitioner initially questioned the delay in disposal of this representation by the State Government, but after some arguments the learned counsel did not press this argument further. The learned counsel then contended that there are some Tamil transcripts in the grounds of detention which were not translated and given to him when the translated copies of other documents were given. We have perused these Tamil transcripts which indicates the conversation the petitioner had in Tamil with others. The statements of those persons who conversed with the petitioner have been supplied to the petitioner which contains the English translation of these very words. Therefore, it is futile to contend that non translation of the actual words spoken by the petitioner himself could have prejudiced the petitioner in making his representation. It is lastly contended that the State Government was prejudiced by the opinion rendered by the detaining authority. This argument is built around the fact that the State Government sought para wise remark from the 2nd respondent while dealing with the petitioner's representation. In response to that the 2nd respondent while sending his remarks in the last para stated that the petitioner's representation may be rejected. This recommendation according to the learned counsel has weighed in the mind of the confirming authority to reject petitioner's representation. We are unable to accept this argument also. It is normal under the rules of business for the Government to seek the remarks of the officer against whose order a representation is made to the Government. As a matter of fact, if such remarks are not called for and statutory representations are rejected summarily by the Government it would be considered as a rejection without application of mind. Therefore, in cases where the considering authority feels that the remarks of the officer who made the original order is necessary then such superior authority must call for such remarks. In the instant case, the representation filed by the detenu did raise certain factual points which without the comment of the detaining authority might have been difficult to be dealt with. Therefore, in our opinion, the authority considering the representation had justly called for the remarks. The next limb of this argument that the State Government was influenced by the remarks of the detaining authority to dismiss the representation is too far fetched. In the instant case, the Government of Tamil Nadu has been authorised to be the authority to consider the

representation against the detention order made by the Commissioner of Police who is subordinate to it. Therefore, to presume that such higher authority would be influenced by an observation made by the subordinate to such an extent as to surrender its independent authority is to demean the independence of authority exercised by the State Government, hence this argument is recorded here only to be rejected.

9. For the reasons stated above, this petition fails and the same is dismissed.