CASE NO.:
Appeal (crl.) 698 of 2006

PETITIONER:
R. Kalavathi

RESPONDENT:
The State of Tamil Nadu and Ors.

DATE OF JUDGMENT: 03/07/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P .(Crl.) No.1711/2006)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Madras High Court dismissing the Habeas Corpus Petition filed by the appellant seeking release of Rathina Raj @ Rathnavel Pandian (hereinafter referred to as the 'detenu'), who was detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short the 'Act') as a "Goonda". The accusation against him was to the effect that he is habitually committing crime and that he had also acted in a manner prejudicial to the maintenance of public order and as such he is a "Goonda" as defined under Section 2(f) of the Act.

The order of detention was passed in respect of Rathina Raj, which was approved by the State Government. The detention order was challenged by filing a Habeas Corpus petition before the Madras High Court.

Before the High Court primarily the following grounds were urged:

(1) There is discrepancy in the case numbers and the detaining authority was not supplied with material documents;
(2) The translated copy supplied to the detenu in Tamil language was different from what was supplied in the English language and there were several defects. That being so, the detenu was not in a position to make an effective representation;
(3) Relevant and material documents were not placed before the detaining authority and were also not supplied to the detenu and as such he was prevented from making an effective representation;
(4) Sufficient material was not placed before the detaining authority to pass the order of detention which was passed mechanically.

The High Court noticed that there were some differences between the English version and the Tamil version. But those were considered to be too trivial to affect the order of detention. The other grounds were also not accepted.

In support of the appeal, Mr. Jayant Bhushan learned senior counsel submitted that at least two documents clearly show that the records were manipulated. Additionally, for being labelled as a Goonda under the Act, the definition of '"Goonda" under Section 2(f) of the Act is relevant. The grounds of detention referred to only one incident and there is no material to show that the detenu was habitually committing crime.

In support of the order of detention and the order of the High Court, learned counsel for the State submitted that it is fairly well settled that it is the impact of an act and not the number of acts which determine whether the act can be relatable to public order or not. In the instant case, the scenario as described in the grounds of detention clearly shows that the acts committed by the detenu were of such intensity that even tempo of life was affected and public tranquility was disturbed. Therefore, according to him, the detenu has rightly been detained.

Though reference was made by learned counsel for the appellant to several documents to contend that the records were manipulated, we do not consider it necessary to go into that aspect, because in our considered view the order of detention is liable to be quashed on the other ground as submitted by learned counsel for the appellant i.e. absence of materials to show that the detenu was habitually committing offences.

Section 2(f) of the Act reads as follows:

"xx xx xx xx

(f) "Goonda" means a person, who either by himself or as a member of or leader of a gang habitually commits, or attempts to commit or abets the commission of offence, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860)."

(underlined for emphasis)

A bare reading of the provision makes the position clear that in order to attract action in terms of Section 3(1) of the Act, the detenu must be one who is a "Goonda" as defined under Section 2(f) of the Act. Though in other preventive detention laws, even a single act which has the propensity of affecting even tempo of life and public tranquility would be sufficient for detention, being prejudicial to maintenance of public order. For the purpose of the Act the detenu has to be a "Goonda" as defined under Section 2(f) of the Act.

Habitual : The meaning of the words "habit" and "habitually" as given in the Advanced Law Lexicon (3rd Edn.) by P. Ramanatha Aiyer is : "Habit \026 settled tendency or practice, mental constitution. The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by 'habit' and 'habitually' imply frequent practice or use. "Habitual \026 Constant; customary; addicted to a specified habit". The Court in Vijay Narain Singh

v. State of Bihar (1984 SCC (Crl.) 361), considered the question of a habitual criminal and in para 31 the expression "habitually" was explained as follows: "The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts - repeated, persistent and similar, but no isolated, individual and dissimilar acts are necessary to justify an inference of habit". The expression "habitual" would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter. (See: Vijay Amba Das Diware and Others v. Balkrishna Waman Dande and another. (2000 (4) SCC 126).

The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti Social Activities Act, 1985. The word 'habitually' does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyer's Judicial Dictionary, 10th Edition, at p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. (See Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police (1995 (3) SCC 237).

The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See: Ayub alias Pappukhan Nawabkhan Pathan v. S.N. Sinha (1990 (4) SCC 552).

From one single transaction though consisting of several acts, a habit cannot be attributed to a person.

Judged in the background of legal position delineated above the order of detention cannot be maintained because it only refers to one act. There is also no material to justify the conclusion that the accused was habitually committing crime. There is no reference to any other crime. Therefore, the order of detention cannot be maintained. The High Court has not considered this aspect in the proper perspective. The order of detention in respect of the detenu which was passed by the Commissioner of Police, Chennai on 1.8.2005 is quashed. The order of the High Court is set aside. Detenu be released from detention forthwith unless required to be otherwise detained.

The appeal is allowed.