

CASE NO.:
Appeal (crl.) 911 of 2006

PETITIONER:
A. Geetha

RESPONDENT:
State of Tamil Nadu & Anr.

DATE OF JUDGMENT: 04/09/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 2083 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Madras High Court dismissing the Habeas Corpus Writ Petition filed by A. Geetha wife of Anandaraj @ Anand @Anandan, (hereinafter referred to as the 'Detenu'). The aforesaid detenu was detained under Section 3(2) 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'). The order was passed on the basis of ground case in Crime No. 175 of 2005 for alleged commission of offences under Sections 3(1), 4(1), 5(1), 6(1) and 7(1) of the Act and Section 366 of the Indian Penal Code, 1860 (in short the 'IPC'). The allegation against the detenu was that on 5.9.2005 at about 17.15 hours the Sub-Inspector of Police proceeded on rounds to watch whether any prostitution activity was going on at Vadapalani, Arcot Road, Chennai City. When he was so proceeding near Avichi School, he noticed that the detenu was sitting in a red colour Maruti car and doing prostitution business. The detaining authority took note of three other adverse cases wherein the detenu was involved in prostitution business. Offences as noted above related to keeping a brothel, living on the earnings of prostitution, procuring, inducing for the sake of prostitution detaining women in premises where prostitution is carrying on and doing prostitution in the vicinity of public place and abducting women for prostitution which were punishable under the Act and IPC. The investigation revealed that the detenu used to get young innocent poor girls, who because of poverty were in search of employment from State of Andhra Pradesh under the guise of getting employment and induced and forced them to indulge in prostitution business and took house a Porur, Chennai and kept the procured girls there and at times he took them to different places in Chennai city in cars and forced them into prostitution and earn huge money with the help of his associates. The investigation further disclosed that the detenu and his associates were doing such prostitution business at various places and were spoiling lives of young

persons. Considering these activities to be prejudicial to maintenance of public order and being of the view that recourse to normal criminal law would not have desired effect in preventing him from indulging in such activities which are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an 'immoral traffic offender' and was kept in custody at the Central Prison, Chennai. The order of detention was assailed by filing a habeas corpus petition before the Madras High Court. One of the major plank of the appellant's argument was that the representation dated 25.9.2005 received by the detaining authority on 26.9.2005 had not been considered though the Government approved the order of detention only on 2.10.2005. It was submitted that the said representation was neither placed before the Advisory Board nor the Government and therefore the ultimate order passed by the detaining authority is liable to be set aside. The State with reference to the records produced contended that all the six representation submitted by the detenu and/or his relatives were placed before the Advisory Board as well as the Government and all of them were duly considered. It was also stated that even the pre-detention representation dated 15.9.2005 was duly considered. The High Court verified the records and came to the conclusion that all the representatives were placed before the Advisory Board as well as before the Government, were duly considered and rejected. It was pointed out that no new point was urged in the representation dated 25.9.2005 copy of which was annexed, even if it is accepted for the sake of argument that such a representation was made and it was held that since all the representations were duly considered, the detenu was in no way prejudiced. The High Court further found no substance in the plea that one of the adverse cases related to an offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'NDPS Act') and since the same was more grievous offence, the possibility of coming out of bail was removed.

High Court noticed that the punishment under the NDPS Act depends upon the quantity of the material seized and in the absence of any details being furnished it cannot be said that possibility of coming out of bail was remote.

It was pointed out by learned counsel for the State that offence punishable under Section 366 IPC is also graver in nature and liable for imprisonment up to seven years and fine and therefore the High Court held that the detaining authority was well within his power in describing the detenu an 'immoral traffic offender' and detaining him on grounds stated. The High Court found substance in the conclusion of the detaining authority that the detenu was not only spoiling young innocent boys and girls but his activities were paving way to sexual diseases in an epidemic proportion which will effect maintenance of public order and health. Accordingly the writ petition was dismissed.

After the first writ petition was dismissed a second Habeas Corpus Petition was filed where the same order of detention was challenged. The only ground urged in support of the second petition was that the order of rejection was passed on 2.10.2005 and the same was served on 6.10.2005. The High Court noticed that this plea was available to be urged in the first writ petition and it having not been done the order of detention was not vulnerable. The High Court referred to some earlier judgments rendered by two different

Bench and held that the second petition, on the self same grounds and grounds which could have been urged, was not maintainable.

In support of the appeal learned counsel for the appellant submitted that the bail application was rejected on 17.9.2005 and the order of detention was passed on 21.9.2005. It was submitted that there was no scope for observing that there was likelihood of release. Further, one of the representations was not dealt with.

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 the moral fibre of the community was disturbed. Prostitution with the likelihood of spread of sexual disease on a huge scale was imminent. Therefore, according to him, the detenu has rightly been detained.

By way of additional affidavit the second respondent i.e. Commissioner of Police, Chennai has placed on record a letter dated 4.1.2006, in respect of the representations of the appellant indicating the details, the representations received and dealt with.

It may be noted that the conclusions about imminent possibility of release on bail are under challenge.

It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse-dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati v. Govt. of NCT of Delhi and Another* [2002 (7) SCC 129]. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not "normal" case. The High Court was justified in rejecting the stand of the appellant. [See: *Ibrahim Nazeer v. State of Tamil Nadu and Anr.* (JT 2006 (6) SC 228) and *Senthamilselvi v. State of T.N. and Another* (2006 (5) SCC 676)].

Further the second respondent has filed an additional affidavit indicating that on verification of the registered post register for central zone, it has been noticed that no representation either from the detenu or on his behalf was received through registered post between 25.9.2005 and 30.9.2005. In view of the aforesaid, we find no substance in this appeal and the same is accordingly dismissed.