
(1995) 03 MAD CK 0020

In the Madras High Court

Case No : Habeas Corpus Petition No. 1655 of 1994

E. Rajapandi

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Constitution of India, 1950 — Article 22(4)

Citation : (1995) 2 LW(Cri) 474

Hon'ble Judges : Venkatachalam, J;Janarthanam, J

Bench : Division Bench

Advocate : M. Karpagavinayagam, for the Appellant; I. Subramanian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Janarathanam, J.—One E.Rajapandi (petitioner) is the brother of the detenu Marimuthu. The detenu, it is said is a bootlegger. Apart from

the ground case as set out in the grounds of detention he had come to adverse notice in three other cases.,

2. The District Magistrate and Collector of Chidambaranar District, Tuticorin (second respondent) in exercise of the powers conferred by sub-

Section (1) of Section 3 of Tamil Nadu Act 14 of 1982, clamped upon the detenu, the impugned order of detention in his proceedings H.S.(M)

Condi.No;64/94 dated 11.10.1994 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and health.

3. Mr.M.Karpagavinayagam, Learned Counsel appearing for the petitioner would press into service the lone and sole ground, namely, that copies

of certain vital documents such as General Diary Entry made by the Sub-

Inspector of Police, Tiruchendur Police Station on 29.9.1995 and pocket note-book of the Sub Inspector of Police, Tiruchendur for dates 28.9.1994 and 29.9.1994 asked for to be furnished by the detenu in his representation dated 25.10.1994 had not been furnished till upto 18.11.1994, the date on which the Advisory Board met and expressed its final opinion as to the existence of sufficient cause for the detention, which greatly affected the right of representation of the detenu before the Advisory Board and on this short ground alone, he would say, the impugned order of detention, is liable to be set aside.

4. Mr.I.Subramanian, learned Additional Public Prosecutor, representing the respondent, would however, repel such a submission and produce the relevant file for perusal and consideration of this Courts

5. There is no pale of controversy that the General Diary Entry made by the Sub Inspector of Police, Tiruchendur Police Station on 29.9.1994 and the pocket note-book of the said Sub Inspector for the dates 28.9.1994 and 29.9.1994 had not at all been relied upon by the second

respondent/Detaining Authority and this is patent by cursory perusal of the grounds of detention. Such being the case Mr.I.Subramanian, learned

Additional Public Prosecutor representing the respondents would say that such non-furnishing of the copies of documents is of no consequence. To

such a submission, we are unable to affix our seal of approval in the peculiar facts and circumstances of the case. No doubt, true it is, the copies of

the aforesaid documents asked for to be furnished by the detenu may not at all be stated to be not having any relevance to the clamping of the

detention order when especially the contention as emerging from Learned Counsel for the petitioner is that those documents are absolutely

necessary to make an effective representation before the Advisory Board inasmuch as there are some materials available therein pointing out the

factum of illegal custody of the detenu on and from 38.9.1994 much earlier to the submission of the occurrence in the ground case.

6. From a perusal of the file, we are able to understand that though the representation is dated 25.10.1994, yet it is signed only 1.11.1994. What

is further revealed from the file as stated by the Learned Counsel appearing for the petitioner is that the Advisory Board met on 18.11.1994 for

expressing its final opinion. It is also not in dispute that though copies of the

documents asked for to be furnished by the detenu has not been furnished till upto 18.11.1994, the date on which the Advisory Board met and expressed its final opinion. Pertinent it is to point out, at this juncture, that the Advisory Board is an independent body consisting of many dignitaries, in the cadre of Hon"ble Judges of High Court of Judicature. Under the scheme of the Act the Advisory Board is entitled to sift and scan all factual materials and come to an independent conclusion of its own different from one arrived at by the Detaining Authority. Once a conclusion is, arrived at by the Advisory Board, on assessment of factual situation and an opinion is expressed that there is no sufficient cause for continued detention, such opinion is binding upon the Government. Such being the position, the copies of documents asked for to be furnished by the detenu, as according to him, having some relevance to the detention order, have to be furnished to the detenu much earlier to the meeting of the Advisory Board, so as to enable him to make an effective representation before the Advisory Board. No one can speculate as to what is the type of user those documents could be made by the detenu before the Advisory Board.

7. In the instant case, as already stated, it is the case of the petitioner that the copies of documents if furnished, the same could have enabled the detenu to make it appear before the Advisory Board that he was kept in illegal detention on and from 28.9.1994 much earlier to the occurrence in the ground case. What is so projected, may or may not be correct. But the correctness or otherwise of such projection of submission will be met with by furnishing copies of all those documents asked for before even Advisory Board meet so as to enable it to come to the conclusion in the process of sifting and scanning the materials before it.

In this view of the matter, the non-furnishing of copies of those documents asked for to be furnished by the detenu greatly affected the right of representation inhering in his favour under Article 22(4) of the Constitution of India.

8. Therefore, the impugned order of detention is liable to be set aside and the same is accordingly set aside. The detenu is therefore, ordered to be set at liberty forthwith, unless and until he is required to be detained in connection with any other case. The Habeas Corpus Petition is thus

allowed.