

(2009) 04 MAD CK 0267
In the Madras High Court
Case No : HCP (MD) No. 532 of 2008

M. Alex Prabu @ Prabu

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 341, 392

Citation : (2009) 04 MAD CK 0267

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : N. Ananda Kumar, for the Appellant; M. Daniel Manohar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to an order of the second respondent made in Cr.M.P.No.08/2008 dated 22.04.2008, detaining the brother of the petitioner namely Rajini, under Act 14/82 and terming him as Goonda.

2.The Court scrutinized the materials available and in particular, the order under challenge and also the counter affidavit filed by the State.

3.Pursuant to the recommendation made by the sponsoring authority that the detenu Rajini the brother of the petitioner herein, was involved in three adverse cases namely Tiruchirappalli Navalpattu PS Cr. No. 82/2006 under Sections 147, 148, 341 and 302 of IPC, Tiruchirappalli Tiruverumbur PS Cr. No. 317/2007 u/s 392 @ 397 IPC and Tiruchirappalli Tiruverumbur PS Cr. No. 319/2007 u/s 392 IPC, and also one ground case registered by Navalpattu PS in Crime No. 45/2008 u/s 392 IPC, the detaining authority after scrutinizing the materials available, recorded its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, and hence he was a goonda as defined under Act 14/82, and he must be detained under the said Act, and accordingly, made the order which is the subject matter of challenge before this

Court.

4. Assailing the order, the learned Counsel Mr.N.Ananda Kumar would submit that the father of the petitioner made a representation on 24.4.2008, before the detaining authority; that the same was considered the very next day i.e., 25.4.2008; but, neither the representation nor the order pursuant to the consideration was placed either before the State Government or before the Advisory Board; that it was neither considered nor appropriate orders were passed, and thus the order under challenge is infirm.

5. Added further the learned Counsel that there was a representation made on 16.7.2008; that it was not considered in time; that there was an inordinate delay in consideration of the representation and also in the preparation of the rejection letter by the Secretariat; that the same has caused prejudice to the interest of the detenu, and under the circumstances, the order has got to be set aside.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. It is not in controversy that as stated above, the detenu was involved in three adverse cases as referred to above, and also one ground case registered in Crime No. 45/2008 u/s 392 IPC. All the materials were actually placed by the sponsoring authority before the detaining authority. The detaining authority has actually recorded its satisfaction as could be evident from the order that the activities of the detenu were prejudicial to the maintenance of public order and hence passed the order under challenge.

8. Firstly, as could be seen from the available materials, a representation was made by the father of the detenu on 24.4.2008. The available materials would go to show that the same was considered by the detaining authority the very next day. But either the representation or the order passed thereon, as rightly pointed out by the learned Counsel for the petitioner, was neither placed before the State Government nor before the Advisory Board. It is true that the representations have been rejected. But, at the same time, even if the representations were rejected, it must be placed before the State Government enabling them to place it before the Advisory Board for consideration. If not, it cannot be stated that all the materials were placed before the Advisory Board for making a proper consideration so as to take a correct decision in the matter. In the case on hand, it has not been enabled to do so, and thus, it would be violative of the mandatory provisions which, in the considered opinion of the Court, has caused prejudice to the interest of the detenu, and by the same the order under challenge suffers.

9. Secondly, from the materials available, it would be quite clear that a representation was made on 16.7.2008, and remarks were called for on 21.7.2008. The remarks were received on 29.7.2008. There were eight intervening days. According to the State, there were two intervening holidays. But, even then, there were six intervening days, which remained unexplained.

The said delay, in the considered opinion of the Court, is unreasonable. Further in a given case, the longer delay can even be found to be reasonable if there are proper reasons adduced. In the instant case, there was a delay of six days. It would be indicative of the fact that it does not speak of the promptitude on the part of the authority. It can be stated that it has also caused prejudice to the interest of the detenu. Therefore, on the above two grounds, the order has got to be made undone.

10. Accordingly, this habeas corpus petition is allowed setting aside the order of the second respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.