

(2014) 06 MAD CK 0079
In the Madras High Court
Case No : H.C.P. No. 2600 of 2013

Mahi	Vs	APPELLANT
State of Tamil Nadu		RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)
Penal Code, 1860 (IPC) — Section 294(b), 336, 427, 506(ii)

Citation : (2014) 06 MAD CK 0079

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the detenu herein and he has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in Memo No. 1318/BDFGISSV/2013, dated 13.10.2013.

2. The detenu came to adverse notice in the following cases:

S.No.

Police Station and Crime No.

Sections of Law

1

J-5 Shastri Nagar Police Station

Crime No.974/2007

341, 324 (2 counts), 506(ii) r/w 34 IPC

2

J-5 Shastri Nagar Police Station

Crime No.1532/2013

341, 323, 506(ii) IPC

3

J-5 Shastri Nagar Police Station

Crime No.2122/2013

294(b), 506(ii) IPC

4

J-5 Shastri Nagar Police Station

Crime No.2151/2013

341, 294(b), 324, 307 & 506(ii) IPC

The ground case alleged against the detenu is one registered on 07.10.2013 by the Inspector of Police, J-5 Shastri Nagar Police Station in Crime No. 2158/2013 for offences under Sections 294(b), 427, 336 and 506(ii) IPC.

3. Though the learned counsel for the petitioner raised several grounds to assail the impugned order of detention, he mainly focussed his arguments on the question of delay in consideration of the petitioner's representation, which has not been properly explained by the respondents. Therefore, it would vitiate the rights guaranteed under Article 22(5) of the Constitution of India.

4. We have heard Mr. P. Govindarajan, learned Additional Public Prosecutor on the above point and perused the records.

5. On a perusal of the list informing the course of consideration of the petitioner's representation, it is seen that the Detention Order was passed on 13.08.2013; the detenu made a representation to the detaining authority on 24.10.2013; it was received by the competent authority on 30.10.2013 and remarks were called on the same day; only on 25.11.2013 remarks were received and on the same day, file was submitted; the Under Secretary and Deputy Secretary dealt with it on 25.11.2013; on 28.11.2013, the Minister (Electricity, Prohibition and Excise) dealt with it and rejection letter was prepared on 05.12.2013.

6. Verification of the above dates and events would clearly show that there is unexplained delay of eleven (11) days between 30.10.2013, the date on which remarks were called for and 18.11.2013, the date on which remarks were received, excluding seven holidays, i.e. on 31st of October 2013 and 2nd, 3rd, 9th, 10th, 16th and 17th of November 2013. The said delay is not explained by the competent authority. Therefore, it is apparent that there has been an inordinate and unexplained delay in consideration of the petitioner's representation and the same contradicts the requirement of Article 22(5) of the

Constitution of India and the consequence thereof is in infringement of the right of Article 21 of the Constitution of India.

7. Accordingly, the impugned detention order passed by the second respondent in BDFGISSSV No. 1318/2013 dated 13.10.2013 is hereby quashed and the Habeas Corpus Petition is allowed. The detenu, namely Mahi @ Mahendran, aged 32 years in this case is set at liberty forthwith, unless his custody is required in connection with any other case.

8. However, it is made clear that this order shall not preclude the authorities concerned to effectively contest the matter before the Regular Court, uninfluenced by the above order. It is also made clear that this order shall not confer any right or advantage whatsoever to the detenu to claim anything before the Regular Court.