
(2009) 04 MAD CK 0279

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 650 of 2008

Murthy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 341, 392, 393, 397

Citation : (2009) 04 MAD CK 0279

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

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; Daniel Manoharan, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the second respondent, dated 23.07.2008, made in No. 61/BDFGISSV/2008, whereby the order of detention was made against the petitioner under the provisions of the Tamil Nadu Act 14 of 1982, terming him as "Goonda".

2. Affidavit in support of the application along with the grounds of attack and also the counter affidavit are perused. The Court heard the learned Counsel for the petitioner and also the learned Additional Public Prosecutor on the contentions.

3. It is not in controversy that the detenu is involved in two adverse cases viz. (i) Crime No. 737 of 2008 by the B.1 Vilakkuthoon Police Station under Sections 341 and 307 I.P.C.; (ii) Crime No. 671 of 2008 by the Jaihindupuram Police Station under Sections 341, 392 r/w 397 and 506(ii) I.P.C. and apart from the two adverse cases, he is also involved in the ground case in Crime No. 742 of 2008, registered under Sections 392 r/w 397 and 506(ii) IPC on the file of B.1 Vilakkuthoon Police Station. On Scrutiny of the materials placed by the sponsoring authority, the detaining authority made the order of detention, after

recording his subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order and hence, the circumstances and reasons prevailed to make an order under the Tamil Nadu Act 14 of 1982 after terming him as "Goonda", which is the subject matter of challenge before this Court.

4. Advancing the arguments on behalf of the petitioner, the learned Counsel for the petitioner in his sincere attempt in assailing the order would submit that the detenu was arrested on 11.07.2008 in connection with the ground case in Crime No. 742 of 2008 by the B.1 Vilakkuthoon Police Station under Sections 393 r/w 397 and 506 (ii) I.P.C. and apart from the ground case there are two other adverse cases registered against him pending investigation. The order of detention came to be passed on 23.07.2008, but in respect of the ground case, not even a single bail application filed or pending before the Court of criminal jurisdiction. But, the detaining authority has observed in its order that there was a real possibility of the detenu coming out on bail, which was actually passed without any material whatsoever and thus it would indicate that it was only a mere apprehension without any basis.

5. The learned Counsel for the petitioner would further add that there was a representation, made by the wife of the detenu on 27.08.2008. The detaining authority after considering her representation, has also rejected the same. When the materials are placed before the Advisory Board or before the State Government, no material available to indicate that either the representation or the orders passed thereon were placed before the authorities and thus, the detaining authority has not enabled either the State Government or the Advisory Board to consider the requisite materials to arrive at a correct conclusion and to take a decision as one would accept in Law. Added further, the learned Counsel for the petitioner would submit that there was an inordinate and unexplainable delay in consideration of the representation made by the detenu. The learned Counsel for the petitioner would submit that on the above grounds the order under challenge has got to be set aside.

6. The Court paid its anxious consideration on the above contentions.

7. It is not in controversy that the petitioner herein was involved in two adverse cases and one ground case. It is fairly admitted by the learned Additional Public Prosecutor that when the order of detention came to be passed by the detaining authority on 23.07.2008, no bail application was filed or pending before any Court of criminal law. Under such circumstances, it will be highly a matter of surprise to note that in the absence of any material whatsoever, the detaining authority has observed in its order that there there was a real possibility of the detenu coming out on bail. This would be quite indicative of the mere apprehension of the detaining authority without any basis or materials whatsoever.

8. Added circumstance was that when there was a representation, made by the

wife of the petitioner on 27.08.2008, in respect of which acknowledgment is filed and which is also a fact admitted in the course of the counter affidavit filed by the State, there is nothing to indicate that either the representation or order of rejection made by the detaining authority was placed before the Government or before the Advisory Board. It is needless to say that when the matters are placed before the Advisory Board it has to appraise the entire circumstance and also by looking into the materials has to take a decision. In the instant case when there was a representation made and the same was also rejected, all those materials should have been placed before the Advisory Board thereby enabling the Advisory Board to look into the above requisite materials to take a correct decision in the matter. By not placing the said representation made on 27.07.2008 and the decision rejecting the representation by the detaining authority, the Advisory Board was unable to take a correct decision in the matter.

9. Apart from the above grounds, there was a delay noticed. Admittedly, there was a representation made and the same was received by the authority on 27.08.2008. The Honourable Minister for P.W.D. and Law dealt with the same and passed an order of rejection on 10.09.2008. But the letter was prepared on 16.09.2008. It is brought to the notice of this Court that 13th and 14th September, 2008 were holidays. But it is pertinent to note that out of the intervening 6 days two days were holidays and the remaining four days delay remained unexplained, which in the opinion of the Court has caused prejudice to the interest of the detenu. All put together would suffice to set aside the order under challenge.

10. Accordingly, the Habeas Corpus Petition is allowed and the order of detention in No. 61/BDFGISSV/2008 of 2008 dated 23.07.2008 passed by the second respondent is quashed. The detenu is directed to be released forthwith unless his presence, in accordance with law, is required in connection with any other case.