
(1994) 10 MAD CK 0103
In the Madras High Court
Case No : H.C.P. No. 459 of 1994

Nagendran

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1995) 1 LW(Cri) 105

Hon'ble Judges : Dhinakar, J;Arunachalam, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; I. Subramaniam, Additional Public Prosecutor, for the Respondent

Judgement

Arunachalam, J.—Petitioner Nagendran has been detained as a goonda, under Tamil Nadu Act 14 of 1982, in pursuance of an order of detention dated 21-1-1994, passed by the second Respondent, Commissioner of Police, Madras City, with a view to preventing him from acting in any manner prejudicial to the maintenance off public order.

2. To answer the solitary ground urged by Petitioner's Counsel, it will be totally unnecessary to state the facts in detail, which led to the passing of the impugned order.

3. Mr. P. Venkatasubramaniam, learned Counsel appearing on behalf of the Petitioner, referred to paragraph (3) of the grounds of detention, wherein the Detaining Authority has stated as follows:

The Inspector of Police Law and Order, N-1 Royapuram Police Station, also placed before me, a copy of the telegram sent by one Visalakshi on 12-1-1994. I have gone through the contents of the same and the connected records. The contention that he was arrested on 3-1-1994 and kept in illegal custody in P-3 Vysarpadi Police Station and P-5 Mahakavi Bharathi Nagar Police Station, is not correct.

On the basis of his statement in the grounds of detention, it was argued that a copy of the telegram sent by Visalakshi was not furnished to the detenu, in spite of a request having been made. In conjunction with this submission, learned Counsel for the Petitioner referred to ground (f) in Petitioner's affidavit, which reads as follows:

Non-furnishing of the remand order wherein I have mentioned illegal detention before the learned Magistrate. This violates - Article 22(5) of the Constitution of India."

Obviously, we have to understand that non-furnishing of the remand order, had cause considerable prejudice to the detenu.

4. On this ground of challenge, we have heard Mr. I. Subramaniam, learned Additional Public Prosecutor. He submitted that a copy of the remand order need not have to be furnished to the detenu, so long as material stood placed before the Detaining Authority, to show, that on the date of passing of impugned order, detenu was in remand.

5. We have audited the rival contentions with sufficient care. There can be no dispute, that in each and every case, supply of a copy of the remand order cannot be held to be an absolute necessity. If on the question of remand, other material was available before the Detaining Authority, that would suffice. However, in cases where illegal detention or cruelty in custody is alleged, before the Magistrate and that forms part of the Court record, then the remand order may have to be placed before the Detaining Authority, for, the contents of such an order may affect the arrival of subjective satisfaction of the Detaining Authority, either way. In the instant case, we summoned the order of remand from the concerned Magistrate. We find the following endorsement on 13-1-1994:

Accused produced. Accused says that he was arrested along with his brother on the night of 2nd January and his brother was assaulted by police. Accused was remanded till 27-1-1994.

It is clear from the aforestated order that the Petitioner had complained before the Magistrate that he was illegally arrested, even 11 days prior to the ground crime and his brother was also assaulted. We are not now concerned with the brother of the detenu. The telegram allegedly sent by Visalakshi on 12-1-1994, taken note of by the Detaining Authority, also mentions about the arrest and illegal custody of the detenu at Vysarpadi Police Station even from 3-1-1994. Though it can easily be held that, that portion of the grounds wherein the telegram of Visalakshi had been referred to, has been mentioned only in passing and therefore, the detenu may not be entitled to a copy of the said telegram, it cannot be gain-said, that when the remand order also confirms the allegation of Visalakshi, that the detenu had been taken into illegal custody long before the commission of the ground crime on 13-1-1994, we are of the firm opinion, that the order of remand must have been placed before the Detaining Authority, while arriving at his subjective satisfaction. On the basis of the telegram already

noticed by him, coupled with the report made by the detenu before the remanding Magistrate, there was every possibility, of the facts mentioned in the remand order, affecting his subjective satisfaction either way. The said remand order not having been placed before the Detaining Authority and furnished to the detenu to facilitate his making an effective representation, would suffice to hold in his favour.

6. The impugned order of detention shall stand set aside. Detenu is directed to be set at liberty forthwith, unless his detention is otherwise required. This habeas corpus petition is allowed.