
(1984) 09 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No. 8860 of 1984

P. Venkatasubramaniam

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Citation : (1984) LW(Cri) 211

Hon'ble Judges : V. Ramaswami, J; David Annoussamy, J

Bench : Division Bench

Advocate : P. Venkatasubramaniam, for the Appellant; N. Dinakaran, Government Advocate, for the Respondent

Judgement

V. Ramaswami, J.—This is a petition filed by the Duty Counsel of the District Legal Aid Committee, Madras, who was appointed to visit the Central Prison, Madras, during the period from 1st July, 1984 to 31st August, 1984 with a view to give legal remedy and assistance to the prisoners who are not able to get the remedy because of their pecuniary circumstances. It is stated in the affidavit that the Duty Counsel visited the Central Prison and noticed that on the ground of want of escorts and without producing the remand prisoners before the concerned courts on the expiry of the period of remand, the jail authorities were sending the warrants to the courts and used to get extension of the remand from the Magistrates concerned and in this way there are about 287 prisoners in the Central Prison it self without valid and proper extension of remand orders. The Petitioner also has given a list of the names of such prisoners in the Annexure to the affidavit.

2. We issued notice to the Respondents and they are now represented by the Public Prosecutor. He took time for verifying the allegations. Today, he informed us that some of the names given as remand prisoners in the Annexure to the affidavit were either convicted or acquitted and some others have gone on bail and they are now in the Central Prison. He was unable to verify the remaining prisoners yet as they are in large number and requires further time for

verification though he admits that there are some in respect of whom there are no valid renewal or remand orders. However, we think that even at this stage, without waiting for further report from the Public Prosecutor, we shall direct the jail authorities to release such of those remand prisoners who were not produced before the Magistrate after the last beating and whose remand orders were obtained without producing them before court. We may point out that in the Division Bench decision of this Court reported in *Elumalai v. State of Tamil Nadu*, 1983 L.W.(CrL.) 121 it was specifically held that the jail authorities who are also very much concerned in the matter of keeping the prisoners in cellular confinement should not keep any person without orders of remand properly obtained from the concerned judicial Magistrates even for a moment beyond the period of detention already ordered, because, if the jail staff keep any person inside the prison, without proper orders of the court, such keeping would be tantamount to an illegal detention. We therefore, think that we should not delay the matter further and that it is just and necessary we should act immediately and direct the jail authorities to release such remand prisoners. Accordingly, we direct the jail authorities of Central Jail, Madras, to release immediately without waiting for any specific release orders or bail orders from the concerned Judicial Magistrates, all those prisoners whose remand orders were obtained by them without producing them before court since the last hearing. However, the jail authorities may take personal bonds from the concerned remand prisoners for such amount as they may consider it reasonable having regard to the gravity of the offence for their appearance on the dates of hearing in the concerned criminal courts where they have been charged. A copy of the bond will be sent to the concerned Magistrate for taking action if there is any default in appearance. But these directions shall not apply to those cases where the detention was under the provisions of any law relating to the preventive detention.

3. A report as to the number of prisoners and the names of prisoners who are thus released as per this order shall be submitted to this Court by the 25th September, 1984, by the jail authorities of the Central Prison.

4. Though this petition has been filed by the Duty Counsel only with the reference to the Central Prison at Madras and since we apprehend that similar situation may be prevailing in all the other jails in the State and the Union Territory of Pondicherry, we think that similar orders are necessary even with regard to the other remand prisoners lodged in the other jails in the State and in the Union Territory of Pondicherry. We may add that the point has already been decided by a Division Bench and that has become final and nobody could be aggrieved by this order. Accordingly, we direct all the Jail Superintendents in the State and in the Union Territory of Pondicherry to release all the prisoners whose remand orders had been obtained by the authorities without production of the prisoner before the Magistrate and a report to this Court on the action taken within a period of two weeks from the date of receipt of this order. As already stated, the Jail Superintendents may take personal bonds from the concerned remand prisoners for such amount as they may consider it reasonable having

regard to the gravity of the offence for their appearance on the dates of hearing in the concerned criminal courts where they have been charged. A copy of the bond will be sent to the concerned Magistrate for taking action in case there is any default in appearance. But these directions shall not apply to those cases where the detention was under the provisions of any law relating to preventive detention.

5. We record our appreciation of the prompt action taken by the Petitioner, Duty Counsel of the Madras District Legal Aid Committee, in bringing this matter to the notice of this Court and also of the fairness of the Public Prosecutor and the assistance rendered by him.