
(1996) 07 MAD CK 0035
In the Madras High Court
Case No : H.C.P. No. 121 of 1996

Sankar

APPELLANT

Vs

The Commissioner of Police and Another

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1996) 2 CTC 609 : (1996) 2 LW(Cri) 512

Hon'ble Judges : Venkatachalam, J;Janarthanam, J

Bench : Division Bench

Advocate : V. Gopinath for A. Selvarangan and N.S. Nappinai, for the Appellant;
P. Venkatasubramanian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Janarthanam, J.—One Sankar (Petitioner) is the detenu. He, it is said, is a goonda. Apart from the ground case the occurrence relating to

which is said to have happened on 14.10.1995, he had come to adverse notice in five other cases.

2. The Commissioner of Police, Madurai City, Madurai (first respondent) clamped upon the detenu the impugned order of detention, under the

relevant provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), in his proceedings No. 123/BDFGIS/95 dated 19.12.1995 with a

view to preventing him from acting in any activity prejudicial to the maintenance of public order.

3. Mr. V. Gopinath, Learned Senior Counsel representing M/s. K. Selvarangan and N.S. Nappinai, learned Counsel appearing for the petitioner

would press into service the lone and sole ground, namely, that the request for furnishing a copy of the telegram, dated 11.1.1996 said to have been sent by one Pandiammal, mother of the detenu alleging that her sons the detenu had been taken into custody even on 9.10.1995 itself and kept in illegal detention by the sponsoring authority long before the occurrence, in the ground case, which event happened on 14.10.1995, as made in the representation dated 3.1.1996 received by the second respondent Government on 8.1.1996 had not been complied with before the meeting of the Advisory Board, which event happened on 18.1.1996 and in such a situation, the detenu was rather handicapped in making an effective representation before the Advisory Board, which met on 18.1.1996, as already stated, although a copy of the said telegram has been furnished to the detenu on 25.1.1996 and on this short ground alone, he would say, the impugned order of detention is liable to be set aside.

4. Mr. P. Venkatasubramanian, learned Additional Public Prosecutor-in-charge representing the respondents would, however, repel such a submission and produce the relevant film for perusal and consideration of this Court.

5. There is no denial of the fact that the mother of the detenu had made a representation dated 3.1.1996 and the representation so made, has been received by the Government on 8.1.1996. This aspect of the matter is getting revealed from the files produced for our perusal and consideration.

What is further revealed is that the mother of the detenu asked for furnishing or a copy of the telegram dated 3.1.1996 on 11.1.1996. In the said

telegram, she had stated that her son-the detenu had been taken into custody, even on 9.10.1995 itself and kept in illegal detention till upto

14.10.1995, the date on which the ground case occurrence is stated to have taken place and the said ground case has been foisted against her son

the detenu. A copy of the said telegram was not at all furnished till upto 18.1.1996, the date on which the Advisory Board met. The sordid fact is

that a copy of the said telegram had been furnished only on 25.1.1996, along with the rejection order of the representation. The contents of the

telegram, on the facts and in the circumstances of the case, touching upon the question as to whether the detenu could have been available or not

on 14.10.1995, as a freelance for the alleged commission of the ground occurrence, and on determination of such a question, the first respondent

detaining authority could have been in a position to derive the subjective satisfaction for penning down the impugned order of detention. To put it

otherwise, such a vital and important factor could have influenced the mind of the first respondent detaining authority in one way or the other in the

process of consideration of the materials in penning down the impugned order of detention.

6. No doubt, a copy of such a document had been asked for, for the purpose of making an effective and purposeful representation before the

Advisory Board, subsequent to the passing of the impugned order of detention. The impugned order of detention had been passed on 19.12.1995.

The Advisory Board, as already stated, met on 18.1.1996. The right of representation inhering in favour of the detenu under Article 22(5) of the

Constitution of India has twin facets ,in the sense of making a representation before the concerned Government and the Advisory Board as well.

By the non-furnishing of the copy of the telegram, a vital document, which could have influenced the mind of the first respondent detaining authority

in one way or the other, on the facts and in the circumstances of the case, we rather feel, affected the valuable right of representation of the detenu

before the Advisory Board, when especially, the Advisory Board, in the eye of law, is empowered to sift and scan the materials available on

record and express its opinion regarding the sufficiency or otherwise of the cause for the detention of the detenu. In this view of the matter, we feel

that the non- furnishing of the copy of the telegram affected the valuable right of representation of the detenu inhering in his favour under Article

22(5) of the Constitution of India. The impugned order, as such, is liable to be set aside.

7. In fine, the habeas corpus petition is allowed. The impugned order of detention is set aside and the detenu is ordered to be set at liberty

forthwith, unless and until he is required to be detained in connection with any other cause or case.