
(2002) 04 MAD CK 0039
In the Madras High Court

Sathiah

APPELLANT

Vs

The District Collector and District Magistrate, Cuddalore
District, Cuddalore and The Secretary to Government
Prohibition and Excise Department, Chennai

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226

Citation : (2002) 04 MAD CK 0039

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : K. Jagannathan, for the Appellant; A. Navaneethakrishnan, Addl.
Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—Petitioner is the father of the detenu by name Sureshkumar alias Suresh, who was detained as a ""Goonda"" as

contemplated under Tamilnadu Act 14/82 by the order of the first respondent dated 12/9/2001.

2.The order of detention is challenged solely on the ground that the pre detention representation dated 7/9/2001 which was received by the first respondent on 10/9/2001 was not considered.

3. The learned Additional Public Prosecutor by producing the files has submitted that the pre detention representation made by the father of the detenu dated 7/9/2001 was received by the first respondent on 10/9/2001, and the detaining Authority has considered the same before passing the order of detention dated 12/9/2001.

4. We have considered the rival submissions made by the learned counsel for the

petitioner as well as the respondents.

5. It is not in dispute that the father of the detenu viz., the petitioner herein, has made a pre detention representation on 7/9/2001 which was

received by the first respondent/detaining Authority on 10/9/2001. From the perusal of the file produced before us, it is seen that the detaining

Authority while considering the said pre detention representation has made the following endorsement on the said pre detention representation

itself.

Considered before passing the orders

6. It is also not in dispute that the decision of the detaining Authority after considering the said pre detention representation was not communicated

to the detenu or the petitioner herein. The endorsement made by the detaining Authority on the pre detention representation of the petitioner dated

7/9/2001 shows that it was passed only without application of mind to the grievances expressed in the said representation. The mere endorsement

viz., ""considered before passing the orders"" in our view, is not a proper application of mind to the pre detention representation made by the

petitioner. The said endorsement is by itself speaks for non application of mind on the part of the detaining Authority. A Division Bench of this

Court in the decision reported in T.M. Syed Ali and another Vs. State of Tamil Nadu and five others, while considering the similar question held

that statements made in the pre detention representation are crucial and the same are to be taken into consideration for deciding as to whether the

detaining authority has to pass or not to pass the order of detention. On the above background the Division Bench held that non furnishing those

materials to the detenu or the petitioner will impair the right of the petitioner to make proper and effective representation guaranteed under Article

22(5) of the Constitution of India. Holding so, the Division Bench set aside the order of detention.

7. On the facts of the present case, we have to necessarily hold that the pre detention representation was considered by the detaining authority in a

machanical manner without any proper application of mind to the grievances expressed in the representation. Further the said decision of the

detaining authority was not communicated to the petitioner or the detenu, who has every right to make effective representation against the orders of

detention. In that view of the matter, the petitioner and the detenu were deprived of their valuable right to make further representation against the order of detention. Accordingly the petitioner should succeed.

8. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention dated 12/9/2001 passed by the first respondent is

hereby set aside. The detenu shall be set at liberty forthwith, unless he is required in connection with some other case.