

(2003) 11 MAD CK 0045
In the Madras High Court
Case No : H.C.P. No. 470 of 2003

Srikanth

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Constitution of India, 1950 — Article 25(5)

Citation : (2003) 11 MAD CK 0045

Hon'ble Judges : T.V. Masilamani, J;P.K. Misra, J

Bench : Division Bench

Advocate : P. Venkatasubramanian, for R. Subhadra Devi, for the Appellant; M.K. Subramanian, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties.

2. The petitioner has challenged the order of preventive detention passed u/s 3(1) of the Act 14 of 1982. Even though several contentions have been

raised by the learned counsel for the petitioner, it is not necessary to refer to all the contentions, as in our opinion, the order of preventive detention

is liable to be quashed on a ground relating to non-disposal of the representation made by the petitioner before the detaining authority.

3. The order of detention was passed on 27.02.2003 by the Commissioner of Police, Greater Chennai. In ground No.(VII), the petitioner has

specifically asserted that the representation sent by him to the second respondent, namely, the Commissioner, on 06.03.2003 was not considered.

It has been stated that ""The non consideration of this representation violates Article 22(5) of the Constitution of India"".

4. Even though the writ petition was admitted on 26.03.2003 and notice was

obviously served within a few days, counter affidavit has not been filed refuting the aforesaid contention.

5. Today, the learned counsel representing the State seeks adjournment to file counter. We are not inclined to grant any further time, as we find

that at request of State, the case was adjourned on two other occasions. When the personal liberty of a person is involved, it is expected that the

authorities should act promptly without any delay. The representation was made on 06.03.2003 and from the acknowledgement, it is seen that

such representation was received on 07.03.2003. The non-filing of counter makes it clear that such representation has not been considered.

6. It is of course true that the detention order has been subsequently approved by the Government. When the representation had been made to the

detaining authority before such approval was made, it was the duty of the detaining authority either to consider the same or to send the same to the

Government and to place the same before the Advisory Board for consideration.

7. Similar view had been taken by the Supreme Court in Criminal Appeal No.1330 of 2002, which was disposed on 18.12.2002 (Selvarani V.

State of Tamilnadu & Another) and by a Division Bench of this Court in H.C.P.No.2146 of 2002, which was disposed of on 25.03.2003.

8. In the absence of any such material, we are constrained to observe that such representation of the petitioner made before the second respondent

has not all been considered. On this ground alone, the order of preventive detention is quashed. The Habeas Corpus Petition is allowed. The

detenu is directed to be set at liberty forthwith unless his detention is required in connection with some other case.