

(2009) 03 MAD CK 0108

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 619 of 2008

Thenmozhi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 153(A), 295(A), 336, 427

Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3

Citation : (2009) 8 MLJ 230

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : S. Kanagarajan, for the Appellant; Issaq Manuel, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—Challenge is made to the order of the first respondent dated 05.08.2008 made in Cr. M. P. No. 13 of 2008 whereby the husband of the petitioner was detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Drug Offenders, Forest offenders, Goondas, Immoral Traffic offenders, Sand offenders, Slum Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982) (hereinafter referred as the Act), terming him as a "Goonda" as defined under the Act.

2. The Court heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor on behalf of the respondents and also looked into all the materials including the order under challenge and also the counter affidavit filed by the State.

3. The order under challenge came to be passed on the strength of the recommendation made by the sponsoring authority that the detenu was involved in a case registered in Cr. No. 424 of 2008 under Sections 295(A), 153(A), 505 IPC and 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 on the file of the Karaikudi North Police Station, Sivagangai District on 26.07.2008

as an adverse case and he was also involved in another case registered in Cr. No. 427 of 2008 under Sections 147, 336 and 427 IPC on the file of the Karaikudi North Police Station, Sivagangai District on 27.07.2008.

4. The detaining authority after looking into all the materials recorded his subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order and hence he should be detained under the provision of the Act and accordingly made the order, which is the subject matter of challenge.

5. Advancing his arguments on behalf of the petitioner, the learned Counsel for the petitioner mainly put forth the delay that was caused in considering the representation. He relied on the Proforma placed by the respondents side where the delay is noticed.

6. It is not in controversy pursuant to the recommendation made by the sponsoring authority that the detenu was involved in one adverse case and also a ground case referred to above, the detaining authority passed the order under challenge after recording his subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order.

7. After going through the materials available, the Court has to necessarily set aside the detention order on the ground of delay. From the proforma placed by the State before this court, it could be seen that the representation was made on 19.08.2008, remarks were called for on 20.08.2008 and the remarks were received on 29.08.2008. Thus, there was a delay of 9 days in which, according to the learned Additional Public Prosecutor, two days were holidays. Thus, there was a delay of 7 days which remain unexplained by the State. It would be indicative of the fact that the consideration of the representation was not done with promptitude and there was 7 days delay which remain unexplained. It is needless to state that it would cause prejudice to the interest of the detenu. In the considered opinion of the Court, it would be suffice to set aside the order under challenge on this ground. Hence, this Court has made undone by upsetting the order under challenge.

8. Accordingly, the Habeas Corpus Petition is allowed and the detention order Cr. M. P. No. 13 of 2008 dated 05.08.2008 passed by the first respondent is quashed. The detenu is directed to be set at liberty forthwith unless his presence, in accordance with law, is required in connection with any other case.