
(2007) 03 MAD CK 0045

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 7 of 2007

Anthonyammal

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 20, 2007

Acts Referred:

- Explosive Substances Act, 1908 - Section 3, 5
- Penal Code, 1860 (IPC) - Section 147, 148, 294, 307, 324
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(X)

Citation: (2007) 03 MAD CK 0045

Hon'ble Judges: P.R. Shivakumar, J; M. Chockalingam, J

Bench: Division Bench

Advocate: V. Kathirvelu, for the Appellant; Daniel Manoharan, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

Challenging an order of detention passed by the first respondent against the son of the petitioner by name Anthonyraj, dated 1.12.2006, on the strength of one ground case and four adverse cases, the petitioner has brought forth this petition.

2. On the recommendation made by the sponsoring authority, the detaining authority has passed the order of detention terming the petitioner's son as Goonda under Act 14/82. The order under challenge is perused. The Court heard the learned Counsel for the petitioner and also the learned Additional Public Prosecutor.

3. As could be seen from the available materials, the order came to be passed by the detaining authority on the strength of a ground case registered by Ambasamudram Police Station in Crime No. 207/2006 under Sections 294(b), 307 and 506(ii) of I.P.C. for an occurrence that took place on 16.11.2006, and four adverse cases, first one registered by Ambasamudram Police Station in Crime No. 197/98 u/s 379 of I.P.C. for an occurrence that took place on 10.5.1998; second one registered by Veeravanallur Police Station in Crime No. 109/2002 under Sections 147, 148, 341, 363, 506(ii) and 307 of I.P.C. and Sections 5 and 3 of Explosive Substances Act for an occurrence that took place on 2.7.2002; third one registered by Ambasamudram Police Station in Crime No. 104/2006 under Sections 294(b), 324 and 506(ii) of I.P.C. and Section 3(1)(X) of SC/ST Act for an occurrence that took place on 19.6.2006; and fourth one registered by the same Police Station in Crime No. 206/2006 under Sections 294(b) and 506(ii) of I.P.C. and Section 3(1)(X) of SC/ST Act for an occurrence that took place on 16.11.2006. On the strength of these cases and on perusal of the materials available, the detaining authority arrived at the subjective satisfaction to pass an order of detention.

4. Now, the learned Counsel for the petitioner in his sincere attempt of assailing the order raised two grounds. Firstly, there was a delay in consideration of the representation at two stages. A representation was made on 26.12.2006, and it was received on 28.12.2006. The remarks were called for only on 2.1.2007. Thus, there was a delay of four days at the first stage. Apart from that, the Minister for P & E dealt with the matter on 5.1.2007, and the rejection letter was also prepared on 9.1.2007; but, it was served on the detenu only on 18.1.2007. There was a delay of intervening 9 days at the second stage. Under the circumstances, this delay has caused much prejudice to the detenu, and hence, the order has got to be set aside.

5. The second ground urged by the learned Counsel, is that at the time when the order was passed by the detaining authority, no bail application was pending; that it is also very clear from the materials available; but, the detaining authority has mentioned in its order that there was imminent possibility of the detenu coming out on bail; that this would be indicative of the non-application of mind by the detaining authority; and that this would be sufficient to set aside the order of detention.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. As far as the first ground that there was a delay is concerned, this Court cannot agree with the learned Counsel for the petitioner for the simple reason that on the first occasion, there was a delay of 4 days, which was postal delay in the ordinary course of transit. As regards the delay of 9 days, the learned Additional Public Prosecutor brought to the notice of the Court that between 9.1.2007 and 18.1.2007, there were five public holidays. Under the circumstances, four days were available. In respect of these four days, there is all possibility of postal delay in transit, and it cannot be said to be unreasonable. Hence, the first ground of delay remains to be stated for the purpose of rejection.

8. As far as the second ground is concerned, this Court has to necessarily agree with the learned Counsel for the petitioner. According to the detaining authority, there was imminent possibility of the detenu coming out on bail. It is an admitted position that at the time when it came up for consideration and when the sponsoring authority placed the recommendation before the detaining authority, there was no bail application pending. Thus, it would be indicative of the fact that there could not have been proper application of mind by the detaining authority. It can even be stated that there was non-application of mind. In such circumstances, this Court is of the considered opinion that it would be sufficient to set aside the order, since it suffers with the said infirmity of non-application of mind.

9. In the result, this habeas corpus petition is allowed setting aside the order of the first respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in any other case.