



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.12.2013

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.997 of 2013

Noorzahaan

.... Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruvarur District.
- 3.The Superintendent of Prison ,
Tiruchirappalli Central Prison,
Trichy District.

.... Respondents

Petition is filed under Article 226 of the Constitution of India, seeking an order to issue a Writ of Habeas Corpus, calling for the entire records, pertaining to the detention order passed by the respondent No.2 in C.O.C.No.23 of 2013 dated 17.07.2013 and quash the same and direct the respondents to produce the detenu namely Haji Mohammed, S/o Sikkandar, aged about 34 years detained in Tiruchirappalli Central Prison before this Court and set him at liberty.

For petitioner :Mr.R.Alagumani

For respondents :Mr.C.Ramesh, APP

ORDER

(Order of the Court was made by S.TAMILVANAN,J.)

The Habeas Corpus Petition has been filed by the wife of the detenu, challenging the order of detention passed by the second respondent, by his proceedings in C.O.C.No.23 of 2013, dated 17.07.2013, detaining the husband of the petitioner as a "Goonda" under Section 3(1) of the Tamil Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video
<https://hcservices.courts.gov.in/hcservices/> Private Act, 1982, [for brevity "the Act"] and he has been lodged at Central Prison, Tiruchirappalli at present.



2. Even though several grounds were raised in the Habeas Corpus Petition to quash the Detention Order, the learned counsel for the Petitioner has mainly focussed his argument on unexplained delay. The petitioner has averred that she had made representation as the wife of the detenu before the first respondent on 03.09.2013 and the same was received on 04.09.2013. However, as per the proforma filed by the respondents remarks was received only on 24.09.2013. Hence, there is a delay of 20 days, out of which, 7 days are holiday and there is no satisfactory explanation for the 13 days delay, hence, the order of detention has to be quashed as the same is against law.

3. The learned Additional Public Prosecutor, relying on the counter affidavit, submitted that the representation submitted by the wife of the detenu dated 27.08.2013 was received on 03.09.2013. Remarks were called for from the Detaining Authority on 04.09.2013 and thereafter the representation was rejected by the Government on 28.09.2013. It has been made clear that there is no satisfactory explanation for the delay in the counter affidavit filed by the respondents.

4. Having gone through the counter, we are of the view that there was no explanation offered by the respondents for not disposing the representation received on 04.09.2013 till 24.09.2013. Therefore, there is a delay of 20 days, out of which, 7 days are public holidays and there is no satisfactory explanation for the delay of 13 days. In our considered view, the Detention Order cannot be allowed to stand, as any representation submitted on behalf of the detenu has not been considered and disposed of with utmost care as mandated under Article 22(5) of the Constitution of India. At this juncture, we find it relevant to refer a few decisions of the Hon'ble Apex Court as well as this Court on this aspect.

(i). In *Rashid sk. Vs. State of West Bengal* reported in 1973 (3) SCC 476, the Hon'ble Supreme Court considered similar issue and held that any unexplained delay in disposal of the representation would be breach of constitutional imperative and it would render the continued detention impermissible and illegal wherein the Hon'ble Supreme Court has held as follows:

"The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion."



(ii). In the decisions in Tara Chand Vs. State of Rajasthan, reported in 1980 (2) SCC 321 and Raghavendra Singh Vs. Superintendent, District Jail, reported in 1986 (1) SCC 650, the Hon'ble Apex Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal.

(iii). In Aslam Ahmed Zaire Ahmed Shaik v. union of India and others reported in 1989 SCC (Cr1) 554 the Hon'ble Supreme Court has held as follows:-

"The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation 11 days after it was handed over to the jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

.....

When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5).

(iv). In Ram Sukrya Mhatre v. R.D.Tyagi, 1992 Supp (3) SCC 65, the Hon'ble Supreme Court held thus:-

"The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India.

(v). In the decision in Rajammal v. State of Tamil Nadu reported in 1999 AIR SCW 139 the Hon'ble Supreme Court, in Paragraph Nos.8 to 10, the Hon'ble Supreme Court held thus:-

"8. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for



the decision to be taken on the representation the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M.Abdulla Kunhi and B.L.Abdul Khader v. Union of India, (1991) 1 SCC 476 : 1991 AIR SCW 362. The following observations of the Bench can profitably be extracted here (para 12 of AIR):

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.



10. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus, there is some explanation for the delay till 9.2.1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14.2.1998. Though there is explanation for the delay till 9.2.1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14.2.1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

(vi). In the decision in *Solomon Castro v. State of Kerala* reported in 2000 (9) SCC 561, the delay between 09.04.1999 and 28.04.1999 having not been explained on justifiable grounds in disposing the representation, the order of detention was quashed.

(vii) In the decision in *Sherene v. The Commissioner of Police* reported in 2000 (1) CTC 8, this Court accepted the ground of unexplained delay in considering the representation between 04.08.1998 and 25.09.1998 and set aside the order of detention.

(viii) In *D.Karuppiyah v. The Commissioner of Police, Greater Chennai*, reported in 2004 (1) CTC 208, this Court accepted the ground of unexplained delay in considering the representation between 17.04.2002 and 04.05.2002 and the order of detention was set aside on the ground of unexplained delay.

(ix) In the decision in *Fathima Sudha @ Esaki Sudha v. District Collector & District Magistrate, Tirunelveli District*, reported in 2008 (1) Madras Weekly Notes (Crl) 493 (DB), delay of seven days between 14.01.2008 and 22.01.2008 in communicating the rejection of the representation was held as a vitiating factor to sustain the order of detention.

(x) In *Chellaswamy v. The District Collector and District Magistrate* reported in 2011 (2) Madras Weekly Notes (Crl) 77 (DB), a Division Bench of this Court held that out of the total delay of twelve days, five days were holidays and remaining seven days being unexplained was held as a vitiating factor to sustain the order of detention.



5. This Court an unreported decision in H.C.P.No.108 of 2011, dated 09.11.2011, considered the issue regarding delay. In the said order, the decision made in H.C.P.No.1385 of 2000 dated 27.11.2010, was relied on, wherein unexplained delay of four days was considered to be fatal to further detention of the detenu and on that ground, the detention order was quashed by this Court. It is held in the said order dated 09.11.2011 that though no period is prescribed to decide the delay, as per Article 22 of the Constitution of India, for decision to be taken on the representation, the words "as soon as may be" contained in clause (5) of Article 22 which conveys the message that the representation should be considered and disposed of at the earliest. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the authority concerned. In H.C.P.(MD).No.635 of 2011 by order dated 05.01.2012, this Court set aside similar order of detention on the ground of unexplained delay.

6. It is a well settled proposition of law that unexplained delay is an important ground for deciding an order of detention, which is unsustainable in law in view of the Fundamental Rights guaranteed under Article 21 and 22(5) of the Constitution of India. Preventive detention orders are not punitive in nature, but only preventive.

7. In this case it is crystal clear in the light of various decisions of the Hon'ble Apex Court and this Court, the impugned Detention Order cannot be sustained. Hence, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the second respondent, in his proceedings C.O.C.No.23 of 2013 dated 17.07.2013, is quashed. The detenu, by name, Haji Mohammed, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(R)

/True Copy/

Sub-Assistant Registrar



- To
- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruvarur District.
 - 3.The Superintendent of Prison ,
Tiruchirappalli Central Prison,
Trichy District.
 - 4.The Joint Secretary to Government
Public (Law and Order)
Fort Saint George,
Chennai-9
 - 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

nbj
RL/6c - 21/2/2014

H.C.P. (MD) No.997 of 2013

20.12.2013