

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE B. SUDHEENDRA KUMAR

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(Crl.).No. 298 of 2015 (S)

PETITIONER:

VENUGOPAL, AGED 54 YEARS
S/O. SUKUMARAN, CHITHRABHAVANAM,
ANIKKADU WEST P.O., KOTTAYAM

BY ADVS. SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
2. DISTRICT MAGISTRATE,
KOTTAYAM DISTRICT 686 001.
3. DISTRICT POLICE CHIEF
KOTTAYAM DISTRICT 686 001.
4. SUB INSPECTOR OF POLICE
PALLIKKATHODU POLICE STATION,
KOTTAYAM 686 504.
5. THE SUPERINTENDENT, CENTRAL PRISON,
VIYYOOR, THRISSUR 680 010.

BY GOVERNMENT PLEADER SMT.KOCHUMOL KADAVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE PHTOOCOPY OF THE DETENTION ORDER DATED 07-04-2015.
- EXT.P2 TRUE PHOTOCOPY OF THE GROUNDS FOR PASSING EXT.P1 ORDER.
- EXT.P3 TRUE PHOTOCOPY OF THE ORDER FOR EXECUTION OF DETENTION DATED 7-4-2015.
- EXT.P4 TRUE PHOTOCOPY OF THE REPORT OF THE 3RD RESPONDENT DATED 25-03-2015.
- EXT.P5 TRUE PHOTOCOPY OF THE FIR AND FIS IN CRIME NO 289/13 OF PALLIKATHODU POLICE STATION.
- EXT.P6 TRUE PHOTOCOPY OF THE FIR AND FIS IN CRIME NO 992/13 OF PALLIKKATHODU POLICE STATION.
- EXT.P7 TRUE PHOTOCOPY OF THE FIR AND FIS IN CRIME NO 994/14 OF PALLIKKATHODU POLICE STATION.
- EXT.P8 TRUE PHOTOCOPY OF THE FIR AND FIS IN CRIME NO 208/14 AND REPORT OF PALLIKKATHODU POLICE STATION.
- EXT.P9 TRUE PHOTOCOPY OF THE REPRESENTATION BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P10 TRUE PHOTOCOPY OF THE ORDER REJECTING THE REPRESENTATION SUBMITTED BY THE DETENU DATED 13/5/2015.
- EXT.P11 TRUE PHOTOCOPY OF THE ORDER CONFIRMING THE DETENTION ORDER DATED 11/6/2015.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

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“C.R.”

**K.T.SANKARAN &
B.SUDHEENDRA KUMAR, JJ.**

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Dated this the 20th day of August, 2015

JUDGMENT

K.T.Sankaran, J.

Ajayakumar @ Kannan, the son of the petitioner, was detained as per the order No.H7-17422/2015 dated 7.4.2015, issued under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as 'KAAPA'). The order of detention was executed on 9.4.2015. The detenu was classified as a “known rowdy” in the order of detention. It is stated that he was involved in three crimes. Proceedings under Section 107 of the Code of Criminal Procedure were initiated against him. It is stated that the detenu committed the last crime during the currency of the period of the bond executed by him. The order of detention was confirmed as per Ext.P11 order dated 11.6.2015. The period of detention is six months, as per Ext.P11. The order of detention as well as the continued detention are under challenge in this Writ Petition.

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2. Various points were raised in the Writ Petition. It is not necessary to refer to the arguments raised by the learned counsel for the petitioner in respect of all the grounds, since we are of the view that the continued detention of the detenu should be held illegal on one of the grounds which is discussed below.

3. The detenu submitted Ext.P9 representation dated nil to the Additional Chief Secretary, Home and Vigilance. Ext.P9 was handed over to the Superintendent of Central Prison, Viyyur, where the detenu is detained. The original file would show that the Superintendent (in charge) of the Central Prison, Viyyur countersigned the said representation. But no date is seen mentioned as to when Ext.P9 representation was received by the Superintendent of Central Prison, Viyyur. The office seal of the Central Prison is also not seen placed. However, the seal of the Superintendent is seen affixed on the representation but without any date. Ext.P9 representation was disposed of by the Additional Chief Secretary (Home), as per Ext.P10 order dated 13.5.2015. In Ext.P10, reference No.2 is the letter dated 5.5.2015 of the

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Superintendent of Central Prison, Viyyur, with respect to Ext.P9 representation. In Ext.P10, it is stated that Ext.P9 representation was received by the Government on 12.5.2015. On a perusal of the original records, it is seen that there is no seal or date of the office of the Additional Chief Secretary on the original of Ext.P9 representation. In other words, the original of Ext.P9 representation does not indicate when the Government received the said representation. The original records do not also contain the cover or any other detail which would indicate the date of receipt of Ext.P9 representation by the Government.

4. In paragraph 8 of the Writ Petition, it is stated that the detenu submitted Ext.P9 representation to the fifth respondent (Superintendent, Central Prison, Viyyur) for forwarding the same to the Government. That representation was disposed of as per Ext.P10 order dated 13.5.2015. In paragraph 10 of the Writ Petition, it is stated that Ext.P10 order was communicated to the detenu only on 20.5.2015. In the counter affidavit filed on behalf of the first respondent, it is stated that Ext.P9 representation was received by the first respondent on 12.5.2015 and, without delay, it was disposed

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of as per Ext.P10 order dated 13.5.2015. However, the contention raised in paragraph 10 of the Writ Petition that the detenu received Ext.P10 order only on 20.5.2015 is not seen denied in the counter affidavit filed on behalf of the first respondent or that filed by the third respondent, probably because the authority to say about the same is the fifth respondent. The fifth respondent has not filed any counter affidavit. In other words, there is no denial of the averment in the Writ Petition that Ext.P10 order was communicated to the detenu only on 20.5.2015. If so, so far as the detenu is concerned, he got information about the rejection of the representation only on 20.5.2015.

5. In the facts and circumstances mentioned above, evidently there is unexplained delay in disposing of Ext.P9 representation. It is well settled that the delay in disposing of the representation of the detenu should be satisfactorily explained and the Court must be satisfied that there is reasonable ground for the delay. The right to make a representation by the detenu and the duty cast on the detaining authority to afford the detenu an earliest opportunity of making a representation is inbuilt in Article 22(5) of the Constitution.

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6. In **Icchu Devi Choraria v. Union of India and others** [AIR 1980 SC 1983], it was held thus:

“3. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty and it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law. The courts should always lean in favour of upholding personal liberty, for it is one of the most cherished values of mankind. Without it life would not be worth living.”

In ***Icchu Devi's case***, it was also held that it is now settled law that on a proper interpretation of clause (5) of Article 22, the detaining authority is under a constitutional obligation to consider the representation of the detenu as early as possible, and if there is unreasonable delay in considering such representation, it would have the effect of invalidating the detention of the detenu.

7. In **Pabitra N. Rana v. Union of India and others** [(1980) 2 SCC 338], it was held that the constitutional right to file a representation to the Government carries with it impliedly a right that

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the representation must be disposed of as quickly as possible and any unexplained delay would amount to a violation of the constitutional guarantee contained in Article 22(5).

8. In **Julia Jose Mavelly v. Union of India and others** [AIR 1992 SC 139], dealing with the delay in disposal of the representation by the Central Government, it was clear from the counter statement that the delay occurred on the part of the sponsoring authority in sending the parawise comments. The delay was not satisfactorily explained in the counter affidavit. It was sought to be explained at the time of hearing. The Supreme Court noticed that the respondent concerned has not offered any explanation in the counter for the delay and no supporting affidavit of the sponsoring authority, who alone could explain the delay, was filed.

9. In **Rama Dhondu Borade v. V.K.Saraf** [AIR 1989 SC 1861], it was held thus:

“20. The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution. Correspondingly, there is a constitutional

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mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release to consider the said representation within the reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in Art. 21 of the Constitution.”

10. In **Shalini Soni v. Union of India and others** [AIR 1981

SC 431], the Supreme Court held thus:

“4. Quite obviously, the obligation imposed on the detaining authority, by Art.22(5) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Art.22(5) read with

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Art.19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu.”

11. A Constitution Bench of the Supreme Court in **K.M.Abdulla Kunhi and B.L.Abdul Khader v. Union of India and others [(1991) 1 SCC 476]** held thus:

“12. The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. 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

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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. This has been emphasised and re-emphasised by a series of decisions of this Court. (See : Jayanarayan Sukul v. State of West Bengal, 1970 (1) SCC 219: AIR 1970 SC 675; Frances Coralie Mullin v. W. C. Khambra, 1980 (2) SCC 275; Rama Dhondur Borade v. V. K. Saraf, Commissioner of Police, 1989 (3) SCC 173; and Aslam Ahmed Zahire Ahmed Shaik v. Union of India, 1989 (3) SCC 277.”

12. It is not sufficient that the detaining authority disposes of the representation received by it without delay. The detaining authority has to explain the delay occurred at all stages right from the submission of the representation to the disposal of the representation and the communication of the same to the detenu. If the detaining authority is not aware of the facts to explain any delay which occurred at any stage, it is for the respondent concerned who is aware of those facts to explain the delay. In so far as the detenu

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is concerned, he need only submit a representation addressed to the detaining authority. When he is detained under Section 3(1) of the KAAPA, he can submit the representation only through the Superintendent of jail. The detaining authority has to dispose of the representation and communicate the same to the detenu. The detenu need only take into account the date on which he submitted the representation and the date on which the representation was disposed of and communicated to him. Intervening delay is to be explained by the authority concerned. According to the detenu, the representation submitted by him was forwarded by the Superintendent of jail on 5.5.2015 and the order rejecting the representation was served on the detenu on 20.5.2015. These dates are not in dispute. There is absolutely no explanation for this delay. That Ext.P9 representation was received by the detaining authority on 12.5.2015 and it was disposed of on 13.5.2015 is not an answer to the contention of the detenu that the delay in disposing of the representation is not explained. The continued detention of the detenu is thus illegal. He is liable to be released forthwith.

Accordingly, the Writ Petition (Criminal) is allowed. The continued detention of the detenu is held illegal and there will be a

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direction to release the detenu forthwith, if his detention is not required in connection with any other case.

K.T.SANKARAN
Judge

B.SUDHEENDRA KUMAR
Judge

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