

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

HCP.No.2180/2015

K.S.S.S.Kaleed

..Petitioner

Vs

1.The Principal Secretary to Government
State of Tamil Nadu, Public [SC] Department
Secretariat, Chennai 600 009.

2.The Secretary to Government of India
Ministry of Finance, Department of
Revenue [COFEPOSA Unit], Central
Economic Intelligence Bureau
Janpat Bhavan, "B" Wing, 6th Floor
Janpat, New Delhi 110001.

3.The Superintendent of Central Prison
Puzhal, Chennai 600 066.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus calling for the records of the 1st respondent relating to G.O.No.SR.1/81-8/2015 Public [SC] Department dated 17.08.2015 and quash the same and direct the respondents to produce the body of the detenu Syed, now detained in the Central Prison, Puzhal, Chennai, under section 3[1][i] of Foreign Exchange and Prevention of Smuggling Activities Act, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.Kumar, Senior Counsel for
Mr.M.Abdul Nazeer

For Respondents: Mr.S.Shanmugavelayutham
Public Prosecutor for RR1 and 3

Mr.Rabu Manohar, SCGSC for R2

ORDER

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The petitioner is the father of one Mr.Syed, [detenu herein] who has been detained in the Central Prison, Puzhal, Chennai, in pursuance of the detention order passed by the 1st respondent under section 3[1][i] of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [Central Act 52 of 1974] in G.O.No.SR.1/81-8/2015 Public [SC] Department dated 17.08.2015. He has come up with the present Habeas Corpus Petition, challenging the said detention order.

2 The facts of the case would be as follows:-

[a] One Rowther Neina Mohamed was a passenger intending to go to Singapore on 15.02.2015 by Singapore Airlines flight. On information that he was illegally transporting certain contraband, he was intercepted by the Customs Authorities. It was found that he had two carton boxes as his checked in baggages. They were brought for examination and it had contained foreign currencies like US Dollars, Singapore Dollars etc., totally valued at Rs.1,35,06,215/-. According to the Customs Authorities, he had no authorisation to export the foreign currencies. Therefore, a case was registered against him and witnesses were examined during the course of investigation.

[b] So far as the detenu is concerned, two statements were recorded from the said Rowther Neina Mohamed on 16.02.2015 and two other statements were recorded on 17.02.2015 and 18.02.2015 respectively, in which Rowther Neina Mohamed implicated the detenu herein and he has stated that the detenu was waiting outside the Airport and asked Rowther to carry three bundles wrapped in newspaper and asked him to keep the said bundles in his checked in baggages and hand over the same to the person who would be approaching Rowther outside the Singapore Airport. For such transaction, Rowther was promised that he would be paid Rs.30,000/-. Rowther also accepted the said proposal on account of his poverty. Based on the said statements recorded from Rowther, the detenu was taken into custody and he was produced before the learned Judicial Magistrate, Alandur for remand. While in remand, Rowther Neina Mohamed filed an application seeking bail on 18.02.2015. That was dismissed on 25.02.2015. Yet another bail application was filed by him on 02.03.2015, which came to be dismissed on 10.03.2015. Third such application was filed before the learned Judicial Magistrate, Alandur on 12.03.2015, in which bail was granted to him on

23.03.2015. So far as the detenu is concerned, he moved an application before this Court seeking anticipatory bail and this Court, vide order dated 27.03.2015, granted anticipatory bail to the detenu herein. Statements were recorded from the detenu also by the Customs Authorities. Finally, a show cause notice was issued to the detenu as to why the foreign currencies should not be confiscated. Even before a reply could be given to the said show cause notice, the impugned order of detention came to be passed on 17.08.2015. In pursuance of the said detention order, the detenu has been detained in the Central Prison, Puzhal, Chennai.

[c] In this regard, on 01.09.2015, the detenu made a representation which was sent to the Government of Tamil Nadu by Speed Post on 02.09.2015, contending that the detention order is arbitrary and the same should be withdrawn. The State Government, however, rejected the representation only on 24.11.2015, thereby declining to withdraw the said order of detention. Yet another representation was sent to the Central Government on 23.09.2015 ; but the same has not been so far considered by the Central Government. In those circumstances, the petitioner/father of the detenu has come up with the present Habeas Corpus Petition.

3 We have heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioner ; Mr.S.Shanmugavelayutham, learned Public Prosecutor appearing for the State/respondents 1 and 3 and Mr.Rabu Manohar, learned Senior Central Government Standing Counsel, appearing for the 2nd respondent. We have also perused the records carefully.

4 Among other grounds, the learned Senior Counsel would mainly raise two grounds before us.

[i] The first and foremost ground is that though the representation was sent to the State Government on 01.09.2015, the same came to be disposed of only on 24.11.2015, for which, absolutely there has been no explanation. This violates the Fundamental Rights of the detenu. In this regard, the learned Senior Counsel placed reliance on the Judgment of this Court reported in 2013 CrI. L.J 2294 [Subbulakshmi Vs The Commissioner of Police, Tirunelveli and others] and the judgment of the Hon'ble Apex Court reported in 2013 [1] SCC [CrI.] 1131 [Rashid Kapadia Vs. Medha Gadgil and others].

[ii] Learned Senior Counsel would next contend that the impugned order of detention reflects total non-application of

mind on the part of the Detaining Authority, who passed the detention order. In order to substantiate this contention, the learned Senior Counsel would submit that though four statements were recorded from the co-detenu, viz., Rowther Neina Mohamed and though reference has been made extensively about the same in the bail order of the learned Magistrate, there is no reference about these statements at all in the detention order. He would further submit that though the confession statements said to have been given to the Customs Authorities by the co-detenu were retracted by him in the bail application filed by him before the learned Magistrate, the detention order states as though there was no such retraction made at all. This also reflects the total non-application of mind on the part of the Detaining Authority, the learned Senior Counsel contended. In this regard, the learned Senior Counsel relied on the following Judgments:-

[i] 1992 L.W.Crl.170 [Arun Kumar Soni V. Union of India]

[ii] 1993 [2] Crimes 909 [Arunachalam Vs. Pratap Singh]

5 Mr.S.Shanmugavelayutham, learned Public Prosecutor, would vehemently oppose this Habeas Corpus Petition. According to him, in the counter filed by the State Government, the dates of the consideration of the representation have been given elaborately, which would go to show that absolutely there was no delay in considering the representation. Learned Public Prosecutor would submit that though there was no reference made in the detention order about the statements made by the co-detenu to the Customs Authorities, the same were also taken into account and assuming that there is no reference about the same in the Detention Order, that would not automatically vitiate the Detention Order. He would further submit that so far as the retraction of the confession statement is concerned, virtually there was no such retraction made by the detenu at all by filing any petition or Memo. It is also submitted that general and vague statements made in the application seeking bail, would not amount to retraction of the confession. Thus, according to the learned Public Prosecutor, the Detention Order does not require any interference at the hands of this Court.

6 Mr.Rabu Manohar, learned Senior Central Government Standing Counsel appearing for the 2nd respondent would adopt the arguments advanced by the learned Public Prosecutor.

7 We have heard the rival submissions.

8 Insofar as the first and foremost ground raised by the learned Senior Counsel appearing for the petitioner is concerned, admittedly the representation was made on 01.09.2015 and the same was disposed of only on 24.11.2015. Though in the counter, it has been stated that the file was dealt with by various officers at various levels, in our considered view, it cannot be a ground to deprive the valuable right of the detenu to have his representation considered without any delay. The said representation should have been considered and disposed of at the earliest. But here, the same was disposed of after two months. In this regard, we may state that we are not satisfied with the explanation offered by the Government at all. As has been held by the Hon'ble Supreme Court in the Judgment of Rashid Kapadia's case [cited supra], any delay which remains not satisfactorily explained, vitiates the entire proceedings.

9 Apart from that, as rightly contended by the learned Senior Counsel, the Order of Detention also lacks reflection of the application of mind by the Detaining Authority. There is no controversy now before this Court that on four occasions, the co-detenu made different statements. The said statements were extensively referred to in the order of bail granted by the learned Magistrate. But, still the Detention order does not reflect any reference to these statements of the co-detenu at all. This would only go to show that the Detaining Authority did have occasion to look into the statements made by the co-detenu, wherein he had made separate defence in his favour.

10 The next comes the retraction. Learned Public Prosecutor would submit that there is no specific retraction of the confession made by the co-detenu by means of any Memo or petition. Of course, it is true. But the Hon'ble Supreme Court in the Judgments referred to above, has taken a view that the retraction made in the application filed seeking bail itself would amount to retraction. But, in the instant case, ignoring that, the Detaining Authority has held that there was no such retraction of the confession made by the co-detenu at all. This also would go to show that there was non-application of mind on the part of the Detaining Authority.

11 At this juncture, we need to state that preventive detention being a detention without trial, should be very closely scrutinised, as it involves deprivation of the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. As has been consistently considered by the Hon'ble Supreme Court that if there are lapses on the part of the Detaining Authority in passing such order reflecting either non-application of mind or failure to consider the

representation in time, that by itself would be a ground to quash the proceedings so as to set the detenu at liberty. In such view of the matter, we are inclined to allow the Habeas Corpus Petition.

12 Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the 1st respondent dated 17.08.2015 in G.O.No.SR.1/81-8/2015 Public [SC] Department is hereby set aside. The detenu, viz., Syed, son of Kaleed, who is now confined at the Central Prison, Puzhal, Chennai, is hereby directed to set at liberty, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government
State of Tamil Nadu, Public [SC] Department
Secretariat, Chennai 600 009.

2.The Secretary to Government of India
Ministry of Finance, Department of
Revenue [COFEPOSA Unit], Central
Economic Intelligence Bureau
Janpat Bhavan, "B" Wing, 6th Floor
Janpat, New Delhi 110001.

3.The Superintendent of Central Prison
Puzhal, Chennai 600 066.

4.The Public Prosecutor,
High Court,
Chennai.

5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.8087
+1cc to Mr.M.AbdulNazeer, Advocate, S.R.No.8062
+1cc to the Government Pleader, S.R.No.8363

HCP.No.2180/2015

svi (CO)
srg (27/02/2016)



WEB COPY