

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 12.10.2018

CORAM
THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 386 OF 2018
AND CRL. M.P. NO. 2965 OF 2018

Padmavathi

... Petitioner

- Vs -

1. The Secretary to Government
Government of India
Ministry of Home Affairs
(Department of Internal Security)
North Block, New Delhi - 110 001.
2. The Additional Secretary to Government (Home)
Government of Puducherry
Chief Secretariat
Gubert Avenue
Puducherry - 605 001.
3. The District Magistrate
1st Floor, Vazhadvavoor Road
Kavundanpalayam
Puducherry - 605 009.

... Respondents

Petition filed under Article 226 of the Constitution of India seeking for the issuance of Habeas Corpus, to call for the records in No.04/DM/RO/D2/PPASAA/2017 dated 19.06.2017 on the file of the 3rd respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner's husband, namely, Senthil @ Ramesh, S/o Arjunan, aged about 41 years, who is now detained in Central Prison, Kalapet, Puducherry, before this Court and set him at liberty.

For Petitioner : Mr. B.Kumar, SC
for M/s.V.S.Senthil Kumar

For Respondents : Mr.S.Arockiam, CGSC for R1
Mr.R.Shanmugasundaram, SC, for
Mr.D.Bharathachakravathy,GP (Pondy)
for RR-2 & 3

Reserved on	Pronounced on
01.08.2018	12.10.2018

ORDER

DR. S.VIMALA, J.

This Petition has been filed by the wife seeking to quash the detention order passed against her husband, Senthil @ Ramesh, S/o.Chidamabarm, who has been branded as "Goonda and Dangerous Person" by the 3rd respondent, in the order dated 19.06.2017, invoking Section 3(2) of the Puducherry Prevention of Anti-social Activities Act, 2008 (for short 'the Act').

2. The learned senior counsel appearing for the petitioner assailed the order of detention on the following grounds:

(i) Arrest intimation was not sent to the family members of the detenu;

(ii) the detenu was not provided with a copy of the FIR, confession and arrest card in the ground case and, hence, detenu was prevented from making an effective representation;

(iii) There is total non-application of mind on the part of the detaining authority; the detenu was arrested only on 05.11.2017; in the grounds of detention dated 19.06.2017, the detaining authority has mentioned that if the detenu wishes to make a representation to the authority, the same may be forwarded to the Chief Superintendent of Jail, Central Prison, Kallapet, Puducherry, in which, he is confined as expeditiously as possible; therefore, when the detenu was not in confinement, asking the detenu to send the representation through the jail authorities would reflect non-application of mind and on this ground as well, the detention order has to be quashed.

3. To buttress the above argument, reliance is placed on the following decisions to quash the order of detention :-

(i) The Hon'ble Supreme Court in Saeed Zakir Hussain Malik - Vs - State of Maharashtra & Ors. (Crl.A.No.1187 of 2012 - dated 09.08.2012), has held that inordinate delay in execution of the detention order vitiates the same.

(ii) In the case of Anwar Singh, S/o.Shri Tej Mal - Vs - The State of Rajasthan & Ors. (1994 SCC Online Raj 137), the

High Court of Rajasthan held that the inordinate delay between the passing of the detention order (17.06.1993) and serving the same on the detenu (29.04.1994) snapped the co-relation between preventive detention and the alleged activity. As the object of detention stand snapped, the detention is illegal.

(iii) In *Dulal Roy - Vs - The District Magistrate, Burdwan & Ors.* (1975 1 SCC 837), the Supreme Court held as follows:

"The satisfaction of the authority as to the inclination of any person to act in any prejudicial manner in sub-clauses (i) to (iii) of Section 3(1)(a) is a sine qua non for making an order of his detention. The scheme of Section 3(1)(a) presupposes that on the date of the order of detention or in the near future, the person sought to be detained has or will have freedom of action. If a person therefore is serving a long term of imprisonment or is in jail custody as an undertrial and there is no immediate or early prospect of his being released on bail or otherwise, the authority cannot legitimately be satisfied on the basis of his past history or antecedents that he is likely to indulge in similar prejudicial activities after his release in the distant or indefinite future. There must be a proximate nexus between the preventive action and the past activity of the detenu on which it is founded".

(iv) This Court, in *H.C.P. (MD) No.36 of 2018*, dated 06.03.2018, has held that the delay in considering the representation vitiates the order of detention.

(v) The Hon'ble Supreme Court, in *Harish Pahwa - Vs - State of U.P. & Ors.* (1981 (2) SCC 710), held as follows:

"Preventive Detention - Representation - Delay in considering representation caused in soliciting comments from other departments and allowing the representation to lie unattended - Held, the delay would render the detention unconstitutional."

(vi) The Hon'ble Supreme Court in the case of *Rashid Kapadia - Vs - Medha Gadgil & Ors.*, (2012 11 SCC 745) held that right of a person who is preventively detained to make a representation and have it considered by authority concerned as expeditiously as possible is a constitutional right under Article 22(5) - any unreasonable and unexplained delay in considering the representation vitiates the order of detention.

(vii) The Hon'ble Supreme Court, in *Kamleshkumar Ishwardas*

Patel - Vs - Union of India & Ors. (1995 4 SCC 51), held that Officer specially empowered to order detention under COFEPOSA Act/PIT NDPS Act - when such officer passes order of detention, detenu has a right to make representation to him and he is obliged to himself consider and dispose of the same - This is so by giving effect to the expression 'without prejudice to the provisions of S.21 of the General Clauses Act, 1897' in S.11 of COFEPOSA Act and S.12 of PIT NDPS Act - This right of detenu flows from Art.22(5) and is in addition to his right to make representation to State Govt. or Central Govt. - Detenu has to be informed about this right.

(viii) In Nirmal Kumar Khandelwal - Vs - Union of India & Ors. (1978 2 SCC 508) - detention order not confirmed after the receipt of report of the Advisory Board, i.e., within three months of initial detention - detention beyond the initial period of three months held invalid.

(ix) In Deb Sadhan Roy - Vs - State of West Bengal (1972 (1) SCC 308) - report by the Advisory Board - failure of the Government to take action by confirming the detention and extending the period of detention within three months from the date of detention is fatal.

(x) The four principles that are necessary to be followed with regard to considering the representation of the detenu, as has been highlighted in the decision in Jayanarayan Sukul - Vs - State of West Bengal (1970 (1) SCC 219), is relied upon. The four principles are thus:

"First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible.

Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board.

Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State.

Fourthly, 'the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the

Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu'S representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu.

4. Per contra, learned senior counsel appearing for the respondent, in support of the order of detention, placed the following contentions :-

- (i) The instant case is a fittest case of exercise of power of detention;
- (ii) There is no violation of right under Article 22 (5) of the Constitution of India;
- (iii) Tamil translation of all copies are duly provided;
- (iv) The Government of Puducherry has not violated the mandate under Article 22(4) of the Constitution of India;
- (v) There is no unexplained delay in execution of the order of detention.

5. Learned senior counsel for the respondent placed reliance on the following decisions :-

- i) Addl. Secretary to Govt. of India & Ors. - Vs - Smt. Alka Subhash Gadia & Anr. (1992 Supp. (1) SCC 496); and
- ii) Dropti Devi & Anr. - Vs - Union of India & Ors. (2012 (7) SCC 499)

6. This Court bestowed its best attention to the contentions advanced by the learned senior counsel appearing on either side and also perused the materials placed in the typed set of documents as also the decisions on which reliance was placed by the learned counsel for the parties.

7. Before advertng to the contentions advanced by the learned senior counsel on either side, it would be prudent to have an understanding of the relevant provisions of the Act and the crucial dates, which are necessary for the purpose of looking at the case holistically and coming to a conclusion.

8. The detention order is dated 19.06.2017. It has been executed only after 8 months, i.e., on 13.02.2018. As per Section 14 of the Act, the period of detention is one year from the date of detention after the detention order is confirmed under Section 13.

9. Section 9 of the Act mandates that the grounds and order of detention has to be disclosed to the detenu, when the person is detained in pursuance of the detention order. The communication has to be sent, as soon as may be, but not later than 7 days from the date of detention. The furnishing of grounds of detention is for the purpose of affording at the earliest an opportunity of making a representation against the detention order to the Government.

10. Under Section 10 (1) of the Act, the Government shall constitute one or more Advisory Board and within three weeks from the date of detention, the Government shall place the case of the detenu before the Advisory Board along with the following particulars :-

- a) the grounds on which the order has been made;
- b) the representation made by the person affected by the order;
- c) where the order is made by the Authorized Officer, the report made by such officer under Sub Section 3(3).

11. Under Section 12 of the Act, the Advisory Board is expected to submit a report to the Government within 7 weeks from the date of detention of the detenu, indicating whether or not there is sufficient cause for detention of the detenu. Only thereafter, in a case where, the Advisory Board gives the opinion that there is sufficient cause for detaining the detenu, the Government may confirm the detention order for a period not exceeding the maximum period as prescribed under Section 14 as it thinks fit.

12. On the touchstone of the above provisions as also the constitutional guarantees, the Court is now required to scrutinize the materials on record to come to a conclusion whether the detention order could be sustained.

13. The detenu came to the adverse notice of the sponsoring authority on 12.6.2017. On the report of the sponsoring authority, an order of detention was passed by the detaining authority on 19.6.2017, which was approved by the 1st respondent on 23.6.2017, within the prescribed period of 12 days from the making of the detention order. The service of the detention order on the detenu could not be completed, as the detenu chose to evade service by absconding himself. No representation was made by the detenu. The detenu's presence before the Advisory Board on 24.7.17 could not be effected due to his abscondance, which was submitted in the form of a report on 20.7.2017. Therefore, a proclamation u/s 8 (2) (a) of the Act was issued by the District Magistrate on 26.7.2017. CrI. O.P. No.16363/17 was

filed by the petitioner to set aside the proclamation order, while W.P. No.25307/17 was filed by the father of the detenu to forbear the respondents from executing the order of detention.

14. The detenu was arrested in Crime No.33/17 and was remanded to judicial custody on 4.11.17. Though report was put before the District Magistrate for execution of the order of detention, however, the same was not executed, as the post of Chairman of the Advisory Board was vacant. On 30.1.2018, G.O. Ms. No.7 was passed by the Government of Puducherry, constituting the Advisory Board and, thereafter, on 13.2.2018, after accord of necessary permission by the appropriate authority, the detention order along with other relevant papers were served on the detenu through the jail authorities. On 21.2.2018, a representation was made by the petitioner to the detaining authority. The detenu was produced before the Advisory Board on 26.2.2018. On 27.2.2018, on directions of the Advisory Board, additional information report in Tamil was served on the detenu, which was refused to be received by the detenu. On 6.3.2018, the detenu was informed that as the matter is pending before the Advisory Board, the representation given to the Government could not be considered and, therefore, he was asked to give a representation before the Advisory Board. The Advisory Board gave its final opinion confirming the detention on 22.3.2018 and after all the formalities, the order of detention was confirmed on 14.5.2018 and the same was communicated to the detenu on 18.5.2018.

15. The petition in CrI. O.P. No.7438/17 for anticipatory bail in Crime No.33/17 was dismissed on 20.6.2018, while the earlier application for anticipatory bail in CrI. O.P. No.4156/2017 was dismissed as earlier as on 6.3.2017. The above factual details are not disputed by the parties.

16. Two of the main contentions canvassed by the detenu before this Court is the infringement of Articles 22 (4) and 22 (5) of the Constitution of India. It is contended on behalf of the detenu that the representation submitted by the detenu to the Government has not been considered at the earliest point of time. More specifically, it is contended that no orders have been passed on the said representation till date and, therefore, delay in considering the representation is fatal to the order of detention. It is also contended on behalf of the detenu that the mandate under Article 22 (4) of the Constitution has also not been complied with. Other ancillary contentions like delay in executing the order of detention, non furnishing of copies of documents relied upon, arrest intimation not being given to the relatives of the detenu and non-application of mind have also been canvassed. However, in view of attack being made on the constitutional mandate not having been complied with, this Court deems it fit to first deal with the same before adverting to the

other contentions, which would, however, be subject to the outcome of the decision that would be rendered on the infringement of the constitutional mandate.

Confirmation of order of detention - Article 22 (4) :

17. It is the contention of the detenu that the detention having not been confirmed within the period of three months as mandated under Article 22 (4) of the Act, there is no legal detention in the eye of law after the period of three months and, therefore, the order of detention, which is illegal, is liable to be quashed.

18. Sections 13 and 14 of the Puducherry Prevention of Anti-Social Activities Act, 2008 prescribe the circumstances under which the Government may confirm the order of detention. In the present case, the Advisory Board, after affording a personal opportunity of hearing to the detenu, had opined that there is sufficient cause for detention of the detenu, vide its final report dated 22.3.2018. On the Government receiving the opinion of the Advisory Board, the files had gone through various tiers in the Government hierarchy and finally had received the concurrence of the Lt. Governor of Puducherry on 14.5.2018. Thereafter, the Government had issued consequential Government Order detaining the detenu on 18.5.2018.

19. Though it is the contention of the detenu that the confirmation by the Government has not been done within the period of three months, and that the order has been issued beyond the period of three months, however the contention does not merit acceptance.

20. In *Deb Sadhan Roy - Vs - State of W.B.* (1972 (1) SCC 308), the Supreme Court had occasion to consider the period within which the order of confirmation should be sent to the detenu and in that context, it has been held as under :-

"11. While the decision of the Government to confirm the opinion of the Board which according to the decision in *Dattatraya Moreshwar Pangarkar*, has the effect of extending the period of detention beyond three months is in consonance with the tenor of the Act as well as the provisions of the Constitution, there is nothing to warrant the submission that the order of confirmation and extension of the period of his detention should also be within three months from the date of detention. Nonetheless the communication must be within a reasonable time. What is a reasonable time must necessarily depend upon the circumstances of each case. The effect of non-communication, however, may be an irregularity which does not make the detention

otherwise legal, illegal. In Biren Dutta case, the Court was of the view that though under Rule 30-A(8) there is nothing to indicate that the appropriate authority should communicate to the detenu the decision to extend the period beyond three months, "it is desirable and it would be fair and just that such a decision should in every case be communicated to the detenu". In this case there is no allegation that the detenu suffered any prejudice by the delay and in the absence of such an allegation the State is justified in its submission that there may be sufficient grounds for the delay in not communicating it within a reasonable time should the communication itself be considered by this Court to be unduly delayed."

(Emphasis supplied)

21. In the case on hand, it is evident from the materials available on record that the order of confirmation was approved on the 90th day, i.e., 14.5.2018. The consequential Government order informing the confirmation was issued on 18.5.2018. In all, there is a period of five days, which has been taken to communicate the order of confirmation to the detenu. The above delay, in no way, could be said to be unreasonable. The order has been communicated to the detenu within a reasonable time. As held by the Supreme Court above, though the said non-communication could be said to be an irregularity, it could not be said to be an illegality. Therefore, it is clear that the mandate in clause (4) of Article 22 has not been violated to render the detention illegal and this contention is liable to be rejected.

Delay in execution of the order of detention :-

22. It is the contention of the learned senior counsel for the detenu that though the order of detention has been passed on 19.6.2017 and the order of detention has been confirmed by the Government on 23.6.2017, however, the order has been executed only on 13.2.18, with a delay of almost 8 months. The delay in executing the order renders the detention illegal.

23. A perusal of the materials available in the typed set of documents reveal that the order of detention has been passed on 19.6.2017, which has been confirmed by the Government on 23.6.2017 before its execution on 13.2.2018. However, the records further reveal that during the interregnum period, the detenu was absconding and, therefore, the order could not be executed/served on the detenu. Only on the arrest of the detenu on 4.11.2017 in Crime No.33/17, the machinery was set in motion for executing the order of detention.

24. It is the submission of the learned senior counsel for the respondent that the detenu having absconded has hampered the execution of the order of detention, which cannot be put against the respondents. In this regard, useful reference can be had to the decision of the Supreme Court in Subhash Popatlal Dave - Vs - Union of India (2014 (1) SCC 280) :-

"6. There is absolutely no difficulty in accepting the unequivocal position that the purpose of passing the order of preventive detention is not punitive but merely preventive which clearly means that if the authorities are in possession of sufficient materials indicating that the proposed detenu had been indulging in economic offences violating the provisions and jumping the riders imposed by the COFEPOSA Act or other Acts of similar nature, then whether such order can be allowed to be set aside merely due to long lapse of time accepting the plea that there is no live link between the order sought to be quashed and the intention of the authorities to detain the detenu by virtue of such detention order. This Court in a series of decisions, some of which have been referred to hereinafter have consistently dealt with this question and have been pleased to hold that merely because the execution of the detention order has taken long years before it could be executed, the proposed detenu cannot be allowed to take advantage of the passage of time during which the detention order remain pending and thereafter take the plea that the order of detention is fit to be quashed due to its pendency on which the authorities had no control specially when the order of detention is allowed to be challenged before the appropriate court even at the pre-execution stage on any ground that may be available to him except of course the materials which has weighed with the authorities to pass the order of detention as it is obvious that justifiability of the material cannot be gone into at the pre-execution stage since the order of detention and the ground for such order is yet to be served on the proposed detenu as the proposed detenu was absconding or evading the execution of the order on him for one reason or the other.

* * * * *

8. A judgment and order of the Constitution Bench may be cited as the first and foremost authority on the issue involved which is the matter of Sunil Fulchand Shah v. Union of India

[Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409 : 2000 SCC (Cri) 659] , wherein the Constitution Bench observed that a person may try to abscond and thereafter take a stand that period for which detention was directed is over and, therefore, order of detention is infructuous. It was clearly held that the same plea even if raised deserved to be rejected as without substance. It should all the more be so when the detenu stalled the service of the order and/or detention in custody by obtaining orders of the court. In fact, in Sayed Taher Bawamiya v. Govt. of India [Sayed Taher Bawamiya v. Govt. of India, (2000) 8 SCC 630 : 2001 SCC (Cri) 56] , the factual position shows that 16 years had elapsed yet this Court rejected the plea that the order had become stale.

* * * * *

10. Similarly, in Bhawarlal Ganeshmalji v. State of T.N. [(1979) 1 SCC 465 : 1979 SCC (Cri) 318] , the appellant had evaded arrest and surrendered 3 years after the making of the order of detention but this Court had held that the order was still effective if the detenu himself were to be blamed for delay. It is no doubt true that in this matter, the Court had further held that the purpose of detention under the COFEPOSA Act is not punitive but preventive and there must be a "live and proximate link" so that if there is a long and unexplained delay between the order of detention and arrest of the detenu, the order of detention may be struck down unless the grounds indicate a fresh application of mind by the detaining authority to the new situation and the changed circumstances. But where the delay is adequately explained and is found to be the result of recalcitrant or refractory conduct of the detenu in evading the arrest, there is warrant to consider that the link is not snapped. On the contrary, it could be strengthened and that was what precisely happened in the said case.

11. In yet another case of Vinod K. Chawla v. Union of India [(2006) 7 SCC 337 : (2006) 3 SCC (Cri) 270] , this Court had the occasion to consider the effect of delay in execution of the detention order wherein Their Lordships held that the detenu evaded arrest and absconded and in spite of best possible efforts made by the authorities to serve the order, the order could not be executed. Taking the circumstances into

consideration under which the order of detention could not be served, it was held that in view of detenu's own act of evading arrest, delay in execution of the order did not render the detention invalid."

(Emphasis supplied)

25. In the case on hand, the detenu had absconded, whereby the order of detention could not be served on the same being approved by the Government. Only after the arrest of the detenu in connection with another crime, the detention order could be executed. In such a backdrop, the detenu having evaded arrest by his own act, having absconded, the delay in executing the order of detention cannot be said to be vitiated and, therefore, this contention is liable to be rejected.

Delay in considering the representation - Violation of Art. 22 (5) :-

26. The other major ground canvassed by the detenu is the delay in considering the representation submitted to the Government. It is submitted by the learned senior counsel for the detenu that though the detenu has submitted a representation to the Government way back on 21.2.2018, however, the same has not been considered till date and no order has been passed on the said representation and, therefore, non-consideration of the representation at the earliest possible vitiates the order of detention.

27. A careful perusal of the materials available in the typed set of documents reveal that the detenu had submitted a representation to the detaining authority on 21.2.2018. Thereafter, on 26.2.2018, the detenu was produced before the Advisory Board. On 6.3.2018, the detenu was informed that since the matter is pending before the Advisory Board, representation has to be filed before the Advisory Board.

28. The crucial question that arises for determination is whether the Government ought to consider the representation submitted to it irrespective of the opinion that would be given by the Advisory Board.

29. In *K.M.Abdulla Kunhi & B.L.Abdul Khader - Vs - Union of India & Ors.* (1991 (1) SCC 476), the Constitution Bench of the Apex Court had occasion to consider the question whether the confirmation of detention order upon accepting the report of the Advisory Board renders itself invalid solely on the ground that the representation of the detenu was not considered and the subsequent consideration of the representation would not cure that invalidity. In the said context, analysing the various decisions on the point, the Constitution Bench held as under :-

"11. It is now beyond the pale of controversy

that the constitutional right to make representation under clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Secondly, the obligation of the government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the government. It is implicit in clauses (4) and (5) of Article 22 that the government while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the government. The right to have the representation considered by the government, is safeguarded by clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under clause (4) of Article 22 read with Section 8(c) of the Act. (See: Sk. Abdul Karim v. State of W.B. [(1969) 1 SCC 433] ; Pankaj Kumar Chakrabarty v. State of W.B. [(1969) 3 SCC 400 : (1970) 1 SCR 543] ; Shayamal Chakraborty v. Commissioner of Police, Calcutta [(1969) 2 SCC 426] ; B. Sundar Rao v. State of Orissa [(1972) 3 SCC 11] ; John Martin v. State of W.B. [(1975) 3 SCC 836 : 1975 SCC (Cri) 255 : (1975) 3 SCR 211] ; Sk. Sekawat v. State of W.B. [(1975) 3 SCC 249 : 1974 SCC (Cri) 867 : (1975) 2 SCR 161] and Haradhan Saha v. State of W.B. [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778])

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 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 W.B.* [(1970) 1 SCC 219] ; *Frances Coralie Mullin v. W.C. Khambra* [(1980) 2 SCC 275 : 1980 SCC (Cri) 419] ; *Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police* [(1989) 3 SCC 173 : 1989 SCC (Cri) 520] and *Aslam Ahmed Zaire Ahmed Shaik v. Union of India* [(1989) 3 SCC 277 : 1989 SCC (Cri) 554] .)"

(Emphasis supplied)

30. Similar view has been laid down as early as in the year 1970 by another Constitution Bench of the Supreme Court in *Jayanarayan Sukul's* case (supra) where A.N. Ray, J., (as His Lordship then was), speaking for the Constitution Bench, has laid down four principles which should govern the consideration of representation of detenus and the same is extracted hereinbelow for better clarity :

"First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board

including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the government will not send the matter to the Advisory Board. If, however, the government will not release the detenu the government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the government may still exercise the power to release the detenu."

(Emphasis supplied)

31. From the above ratio laid down by the Supreme Court, it is unequivocally clear that the Government is duty bound to consider the representation submitted by the detenu as mandated under Article 22 (5) of the Constitution irrespective of the representation, if any, submitted by the detenu, before the Advisory Board, as the representation submitted before the Advisory Board is only an additional safeguard and not a substitute for consideration of representation by the Government.

32. In the case on hand, it is borne out by record that the detenu had given a representation on 21.02.2018 to the Government against the detention clamped on him. However, curiously, the Government had informed the detenu on 6.3.2018 that the representation should be placed before the Advisory Board, as the matter is pending before the Advisory Board. Therefore, it is clear that the Government, not fulfilling the obligation as mandated under Article 22 (5), but leaving it to the Advisory Board to consider the representation is a fallacious act, which does not have the authority of law and is against the ratio laid down by the Apex Court in the decisions noticed above.

33. It is to be pointed out that with regard to liberty of citizens, the Court stands guard over the facts and requirements of law. There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. It is the duty of the Government, without any delay, to consider the representation submitted by the detenu with an unbiased mind, without looking into the opinion that would be given by the Advisory Board. The consideration of the representation by the Government is only to ascertain whether the detention order is in conformity with the power vested under the law.

34. In the case on hand, it is no doubt true that the Advisory Board had given an opinion opining that there is sufficient cause for detention of the detenu, which opinion has been accepted by the Government while confirming the order of detention. But it is to be pointed out that the Government, with an independent and open mind, has not considered the representation submitted by the detenu, without reference to the opinion of the Advisory Board and passed an order on the said representation. However, the materials available on record reveals that the detenu has been informed to place the representation before the Advisory Board, which is not the intent of Article 22 (5) of the Constitution. The Government has abdicated its power in not considering the representation submitted by the detenu, but had asked the detenu to place the representation before the Advisory Board, is against the constitutional guarantees as envisaged under Articles 22 (4) and (5) of the Constitution. Further, it is to be pointed out that though the order of detention has been confirmed on the basis of the opinion of the Advisory Board, no order has been passed on the representation submitted by the detenu till date, thereby, independent application of mind having not shown by the Government would definitely vitiate the confirmation of detention. For the reasons aforesaid, the constitutional mandate under Article 22 (5) having not been satisfied, there being no consideration of the representation submitted by the petitioner, the non-consideration of the representation vitiates the order of detention and is liable to be quashed.

35. Since this Court has held that the delay in considering the representation has vitiated the order of detention and, thereby, the order of detention is liable to be quashed, the ancillary contentions with regard to non-furnishing copies of tamil version of documents, non-furnishing of copy of the FIR, non-furnishing of confession and arrest memo to the detenu, non-intimation of the arrest of the detenu to the relatives and non-application of mind on the part of the detaining authority while arriving at subjective satisfaction are not required to be considered.

36. For the reasons aforesaid, the order of detention is liable to be quashed and accordingly, the same is quashed. The habeas corpus petition is allowed. The detenu, Senthil @ Ramesh, S/o Arjunan, presently detained in Central Prison, Kalapet, Puducherry, is directed to be set at liberty forthwith unless his detention is required in connection with any other case. Consequently, connected miscellaneous petition is closed.

37. Before parting with the case, this Court would like to point out that this case is yet another instance where this Court is reluctantly compelled to set free from detention a person believed to be a threat to the society, and allowed to go scot-free for want of due care, promptness and attention on the part of the State Government. This Court is left with no choice but to strike down the detention of the petitioner. If only the State Government had properly applied its mind to the correct legal position as laid down by various decisions of this Court and the Apex Court and shown greater concern and anxiety while exercising the power of preventive detention, the infirmity vitiating the detention of the petitioner could have been easily avoided. We hope and trust that the State Government will be more careful in the future so that persons who disrupt the peace and tranquility of the community are effectively prevented from carrying on with their nefarious activities.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

GLN/srk

To

1. The Secretary to Government
Government of India
Ministry of Home Affairs
(Department of Internal Security)
North Block, New Delhi - 110 001.
2. The Additional Secretary to Government (Home)
Government of Puducherry
Chief Secretariat
Gubert Avenue, Puducherry - 605 001.
3. The District Magistrate
1st Floor, Vazhadvavoor Road
Kavundanpalayam
Puducherry - 605 009.

4. The Public Prosecutor (Pondy)
High Court, Madras.

5. The Chief Secretary to Government of Puducherry,

6. The Inspector General of Police,
Puducherry.

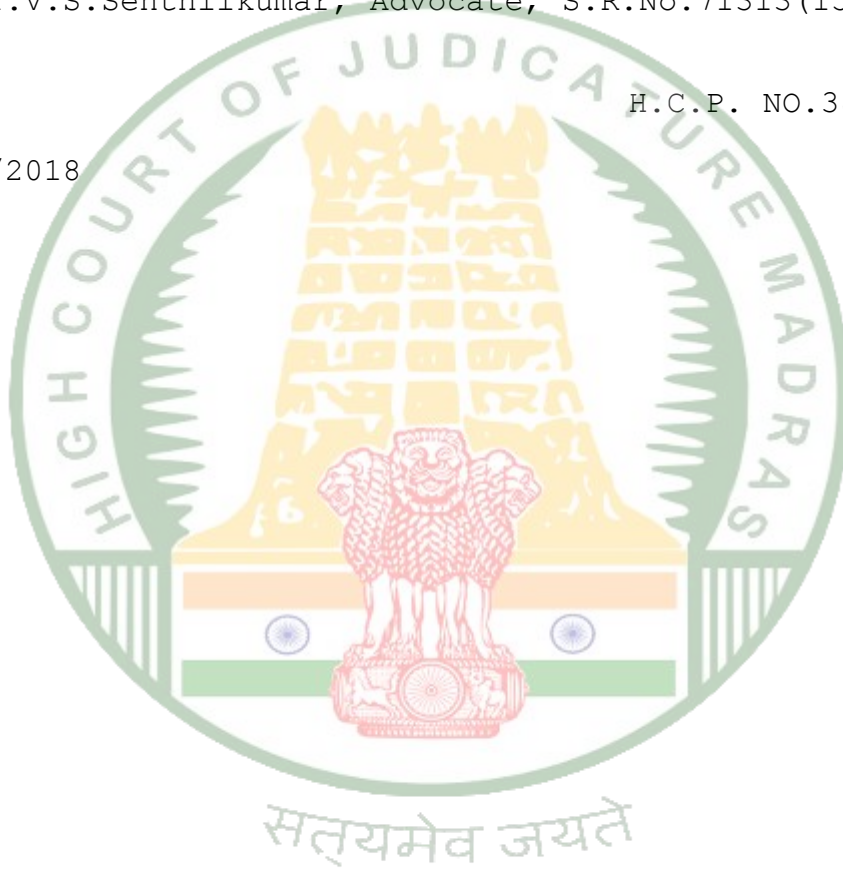
7. The Chief Superintendent of Prison,
Kalapet, Puducherry.

+lcc to Mr.S.Arockiam, Advocate, S.R.No.71283(15/10/2018)

+lcc to Mr.V.S.Senthilkumar, Advocate, S.R.No.71313(15/10/2018)

H.C.P. NO.386 OF 2018

rrs 12/10/2018



WEB COPY