
(2009) 06 MAD CK 0044
In the Madras High Court
Case No : H.C.P. (MD) No. 151 of 2008

C. Jeyalakshmi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Penal Code, 1860 (IPC) — Section 385, 392, 506

Citation : (2009) 06 MAD CK 0044

Hon'ble Judges : R. Mala, J; R. Banumathi, J

Bench : Division Bench

Advocate : N. Ananda Kumar, for the Appellant; P.N. Pandithurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—In this Habeas Corpus Petition, the Petitioner - mother of the Detenu challenges the order of detention passed by the 2nd

Respondent, whereby the the Detenu was detained, branding him as a ""Goonda"", under the provisions of the Tamil Nadu Prevention of Dangerous

Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video

Pirates Act, 1982 (in short ""Tamil Nadu Act 14/1982).

2. The Detenu had earlier come to adverse notice in two cases, as detailed below.

Sl. No. Police Station and Crime No. Provisions of Law

1 Samayapuram P.S.Cr. No. 3/2009 u/s 392, 506(ii) IPC

2 Sirugamani P.S.Cr. No. 1/2009 u/s 385, 506(ii) IPC

The ground case in Crime No. 4/2009 under Sections 392 and 506(ii) IPC on the file of Kallakkudi Police Station relates to the occurrence on

04.01.2009. On being satisfied that the Detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public

order and as such he is a ""Goonda"" and if the Detenu comes out on bail he will indulge in future activities, which will be prejudicial to the

maintenance of public order, the 3rd Respondent passed the impugned order of detention.

3. Even though several contentions were raised and argued as well, the learned Counsel for the Petitioner confined his arguments only on the

question of delay in consideration and disposal of the representation. Learned Counsel for the petitioner submitted that unexplained delay in

consideration and disposal of the representation would vitiate the Detention Order.

4. We have heard the learned Additional Public Prosecutor. Learned Additional Public Prosecutor submitted that there were a number of public

holidays and the authorities have explained the delay and as such there is no unexplained delay vitiating the detention order.

5. Article 22(5) of the Constitution of India casts an imperative duty upon the authorities to communicate the grounds of detention and also afford

reasonable opportunity to the detenu so as to afford him the right of making representation. Such right of making representation is inclusive of the

right of consideration and disposal of the representation within a reasonable time. Any unexplained or inordinate delay in the consideration of the

representation has the effect of vitiating the Detention Order.

6. In The District Collector Vs. Smt. Shaik Hasmath Beebi, , the Supreme Court has held as follows:

Article 22(5) gives the detenu the right to make a representation against an order of detention and such right must be afforded as expeditiously as

possible. In other words, the detenu must be afforded the earliest opportunity of making a representation against the order of detention. Article

22(5) in itself does not say to whom a representation could be made or who will

consider the representation, but because of the language of Article 22(5) and because of the fact that an order of detention affects the liberty of a citizen, without laying down any hard and fast rule as to the measure of time taken by the appropriate authority for considering a representation, it should be considered and disposed of by the Government as soon as it is received.

7. In *Rajammal Vs. State of Tamil Nadu and Another*, , the Apex Court has held that the representation was received by the Secretary to the Government on 05.02.1998, the Government which received the remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. Thereafter, the files were submitted to the Minister, who received it on tour. Finding that there was no valid explanation for the delay from 09.02.1998 to 14.02.1998, the Apex Court held that the delay has vitiated the detention.

8. In the instant case, the chart furnished by the learned Additional Public Prosecutor discloses that the representation, dated 06.02.2009, was received by the Government on 10.02.2009. Though remarks were called for from the Detaining Authority immediately on the next day i.e. on 11.02.2009, such remarks were received by the Government only on 23.02.2009, after a delay of twelve days. Further, though the Minister for PWD and Law dealt with the File on 24.02.2009, the rejection order came to be prepared only on 04.03.2009, after a delay of eight days.

Learned Additional Public Prosecutor submitted that there were three public holidays in between 11.02.2009 and 23.02.2009 and two public holidays in between 24.02.2009 and 04.03.2009. Even excluding the public holidays, in our considered view, there is unexplained delay in consideration and disposal of the representation which would have the effect of vitiating the detention order.

9. Contending that even a delay of three days in disposal of representation would have the effect of vitiating order of detention, learned Counsel for the petitioner has drawn our attention to the decision of this Court in 2007(2) MWN (Cr.) 145 - *Sumaya v. The Secretary to Govt.*, wherein the Division Bench has observed as under in paragraphs 5.3 and 5.4 as under:

5.3. 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, vide Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and

Others, .

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara

Chand Vs. State of Rajasthan and Others, ; and Raghavendra Singh Vs. Superintendent, District Jail, Kanpur and Others, .

We are in respectful agreement with the view taken by the Division Bench.

10. Law is well settled that since personal liberty of a person is involved in the preventive detention, the authorities concerned are required to deal

with the representation with utmost dispatch and promptitude, without any unnecessary delay. Right to expeditious disposal of the representation

by the State Government includes the right to communication of the result of the representation. Further, preparation of rejection letter is only a

ministerial work, which does not require any judicious consideration. The unexplained delay in the consideration and disposal of the representation

would have the effect of vitiating the detention order and accordingly the detention order is liable to be quashed.

11. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention in Cr.M.P. No. 03/2009, dated 29.01.2009, passed

by the 2nd respondent, is quashed. The Detenu Murugesan @ Arayee Murugesan is directed to be released forthwith, unless his presence is

required, in accordance with law, in connection with any other case.