
(2007) 11 MAD CK 0261
In the Madras High Court
Case No : H.C.P. No. 1262 of 2007

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APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Penal Code, 1860 (IPC) — Section 336, 341, 397, 506
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2007) 11 MAD CK 0261

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : G. Natarajan, for the Appellant; N.R. Elango, Assistant Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The second respondent herein clamped an order of detention as against the detenu/petitioner, as the said authority

arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained u/s 3(1) of the Tamil Nadu Prevention of

Dangerous- Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders/ Sand Offenders, Slum Grabbers and

Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention dated 7.5.2007 came to be passed by the second respondent on the basis of the ground case in Crime No. 1556 of

2007 for the offence punishable under Sections 341, 336, 397 read with 506(ii) IPC, complaint of which was given by one Raja, alleging that the

detenu and his associates, on 11.4.2007, at about 0700 hours, wrongfully

restrained him, threatened him by knife and took away Rs. 100/-and a wrist watch; that when he raised hue and cry the public came for his rescue and on noticing the same, the detenu and associates picked up stones and pelted the same against them; that the public noticing the atrocious activities ran for safer places out of fear of danger to their lives; and taking advantage of the situation, the detenu and his associates escaped. The case was taken for investigation and the detenu was arrested.

3. Apart from the above, the detaining authority also took note of two adverse cases pending against the detenu, viz., Crime Nos. 1000, and 1300

of 2007 on the file of Tambaram Police Station for the offence punishable under Sections 341, 397 read with 506(ii) IPC and 397 IPC

respectively.

4. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

5. Challenging the said detention, detenu has come forward with the present Habeas Corpus petition seeking a writ of habeas corpus to direct the

respondents to produce the records pertaining to the detention of the detenu, by order of detention passed by the second respondent in S. Merao

No. 197/2007/BDFGISSV/2007, dated 7.5.2007, to set aside the same and to direct the respondents to cause production of body and person of

the detenu before this Court and to set him at liberty.

6. Heard Mr. G. Natarajan, learned Counsel for the petitioner and Mr. N.R. Elango, learned Additional Public Prosecutor for the respondents.

7. The only contention advanced by the learned Counsel for the petitioner is that there is considerable delay in considering the representation and

the same has rendered the detention illegal.

8. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

9. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a

representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M.

Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, .

10. 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, .

11. 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*, .

12. 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. 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 of 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. Even the reason that

the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that

when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters 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, vide *Rajammal v. State of T.N.* (1999) 1 SCC 411.

13. In the instant case, the impugned order of detention came to be passed on 7.5.2007. A representation was made to the Government on

27.8.2007 and the same was received by it 28.8.2007. Remarks were called for

from the detaining authority on 29.8.2007 and the remarks were received by the Government on 6.9.2007. The file was considered by the Under Secretary, Additional Secretary on 8.9.2007 and 10.9.2007. The Hon"ble Minister rejected the representation of the detenu on 10.9.2007, however the rejection letter was prepared on 14.9.2007, viz., after a delay of four working days. The delay in considering the representation, as indicated above, was highlighted by the learned Counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find *sortie force* as well as substance in this contention. There is, absolutely no explanation for this delay.

14. At this juncture, a reference to. the decision of the Apex Court in *Kandanbhai Dulabhai Sheikh v. District Magistrate, Ahmedabad* :

1996CriLJ1981 is apposite:

In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the "liberty and freedom" to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest.

15. That apart, it is a settled law 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, vide *K.M. Abdulla Kunhi v. Union of India* (1991) 1 3CC 476.

16. The delay on four days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition, must succeed and the same is ordered as prayed for. The detention order dated 7.5.2007 is set "aside. The detenu is directed to" be set at liberty forthwith unless his custody is required in connection with any other

case.