
(1999) 08 KL CK 0016

In the High Court Of Kerala

Case No : O.P. (Habeas-corpus) No. 13153/99

Francis Joseph

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (1999) 08 KL CK 0016

Hon'ble Judges : T.M. Hassan Pillai, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : B. Raman Pillai and S. Vijayakumar, for the Appellant; M.K. Damodaran, General for 1st Respondent and K. Ramakumar, Sr. C.G.S.C. for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—The Petitioner is the brother of one Lawrence Joseph who is under detention in Central Prison, Thiruvananthapuram, pursuant to Ext. P-1 order of detention dated 16th December 1998 passed by the 1st Respondent in exercise of the powers conferred u/s 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) (Central Act 52 of 1974). In Exts. P-2 (a) and P-2 (b) grounds of detention furnished to the detenu soon after the detention it is stated that the detenu is involved in attempting to smuggle out Indian and foreign currencies worth Rs. 16,06,278 out of India in violation of the Foreign Exchange Regulation Act, 1974 (FERA) and the Customs Act, 1962. Soon after receiving Exts. P-2 (a) and P-2 (b) the detenu submitted Ext. P-3 representation to the 1st Respondent on 13th January 1999 through the 3rd Respondent Superintendent, Central Prison, Thiruvananthapuram, who received the same on 12th January 1999. On the same date another representation was also submitted to the 2nd Respondent, Sponsoring Authority.

2. The main grievance highlighted by the Petitioner before us in this petition is that though Ext. P-3 representation was presented to the 1st Respondent by the 3rd Respondent on 13th January 1999 orders thereon were passed only on 6th February 1999 as per Ext. P-5 after a lapse of 25 days for which delay there is no satisfactory explanation forthcoming from the Respondents in which case, the order of detention gets vitiated. We find the submission of the learned Counsel for the Petitioner well-founded. From a perusal of the original records produced before us it is seen that Ext. P-3 representation was received by the 3rd Respondent Superintendent, Central Prison, Thiruvananthapuram, on 12th January 1999 who in turn forwarded the same to the 1st Respondent Home Secretary, Government of Kerala, the very next day, viz. on 13th January 1999. Though the 1st Respondent received Ext. P-3 representation on 13th January 1999, he took six days to despatch the same to the sponsoring authority at Cochin on 20th January 1999 calling for the latter's remarks. There is no explanation, much less satisfactory explanation forthcoming from the 1st Respondent for the inordinate delay that has taken place in forwarding Ext P-3 representation received by him on 13th January 1999 to the sponsoring authority after a delay of six days on 20th January 1999. The conduct of the sponsoring authority is also far from satisfactory. From a perusal of the files it is seen that the representation remained on the table of the sponsoring authority upto 28th January 1999 Without any action being taken thereon, on which date remarks were despatched to the 1st Respondent who received it on 1st February 1999. It was thereafter on 4th February 1999 that the 1st Respondent passed an order rejecting Ext. P-3 representation. Thus, all told there is a delay of 25 days on the part of the 1st Respondent in disposing of Ext. P-3 representation preferred by the detenu. The only explanation furnished in the counter-affidavit filed on behalf of the 1st Respondent is that "the reply was given to the detenu within one month which is a reasonable period and there is no delay in furnishing reply to the Petitioner's brother by the Respondents". We do not think that the Respondents will be justified in dealing with the representation furnished by the detenu who is detained under a law relating to preventive detention in the usual bureaucratic style in which case it cannot be said that Ext. P-3 representation was disposed of with reasonable promptitude which it deserves. [Vide S.M. Jahubar Sathik Vs. State of Tamil Nadu and Others,] The fact that the 1st Respondent took six days to forward Ext. P-3 representation to the sponsoring authority at Cochin shows how casually and lightly he dealt with the entire matter. We are not oblivious of the fact that the delay by itself is not fatal to an order of preventive detention. But at the same time we are equally conscious of the fact that the delay-howsoever short it might be-which remains unexplained would be unreasonable and would afford a ground for rendering the order illegal. The sponsoring authority also adopted a "go slow" approach to the representation keeping it on his table for more than one week. The tepid lukewarm and lackadaisical approach of the authorities in a matter which involves the liberty of the subject cannot be viewed lightly. From a perusal of the files produced before us we are satisfied that though the delay is not long, it has

remained unexplained vitiating the order of detention as unreasonable. [Vide Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another, Para 4]

3. We accordingly allow this petition, quash Exts. P-1 and P-6 and direct that the detenu be released forthwith unless he is required in connection with any other case.