

(1990) 07 MAD CK 0057
In the Madras High Court
Case No : Writ Petition No. 12281 of 1989

Ifath Sultana

APPELLANT

Vs

Govt. of Tamil Nadu

RESPONDENT

Date of Decision : 05-07-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
Constitution of India, 1950 — Article 226

Citation : (1990) 07 MAD CK 0057

Hon'ble Judges : K. Swamidurai, J; Bellie, J

Bench : Division Bench

Advocate : Mr. B. Kumar, for the Appellant; Mr. G. Krishnamoorthy, Assistant Public Prosecutor, for the Respondent

Judgement

Bellie, J.—Ifath Sultana wife of Kaleel Ahamed who has been detained under the provisions of the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974 (hereinafter called COFEPOSA Act) has filed this writ petition under Art. 226 of the Constitution of

India for his release.

2. As per the grounds of detention, it appears on 28-2-1989 the said Kaleel Ahamed arrived at Madras Airport as a passenger from Singapore by

the Singapore Airlines flight SQ 042. When on suspicion he was questioned by the customs authorities whether he was keeping concealed any

contraband articles he answered in the negative but however on persistent questioning he admitted that he was keeping concealed two gold bars

with foreign markings in the chappals he was wearing and a gold bit in his wrist watch. The chappals were torn and they were found to contain one

gold bar in each of them weighing 10 tolas each and the wrist watch when

opened was found to contain a gold bit weighing 26 grams. The detenu then gave a confession statement on 1-3-89 on 2-3-1989 he was arrested and produced before the Additional Chief Metropolitan Magistrate. On 20-7-1989 the detention order was passed u/s 3(1)(i) and 3(1)(ii) of the COFEPOSA Act.

3. Mr. B. Kumar, learned counsel for the petitioner submits that a representation was sent on behalf of the detenu to the Governor which was

received on 23-8-1989 and that was the only representation sent and that has not been considered at all by the detaining authority and on account

of this the detention order is vitiated and the detention is illegal. This point has been raised in the Additional grounds filed by the petitioner. In

answer to this the respondent-Government in its counter would state that in this connection the Governor's Secretariat was addressed and a reply

was received to the effect that the petition was acknowledged by Governor's office and the petition is being traced to send it to the Department.

But it is not the respondent's case that the said petition was ever sent by the Governor's office to the Department for consideration. Therefore it is

a fact that a representation has been sent to the Governor and that has acknowledged on 23-3-1989 but that has not been sent to the Department

for consideration. Therefore the representation sent by the petitioner to the Governor has not been considered at all. Making this submission Mr.

B. Kumar, learned counsel for the petitioner cites a decision of the Supreme Court in Raghavendra Singh Vs. Superintendent, District Jail, Kanpur

and Others, wherein representations were sent to the President of India among others requesting for revocation of the detention order and there

was a delay of 75 days in considering and disposing of the same. It was contended that this was an enormous delay and therefore the detenu's

continued detention was illegal. Therein it was argued on the side of the detaining authority that the representation ought to have been sent to the

Home Department which only deals with the matter and the delay has occurred because it has been sent to the President and since the President

receives thousands of memorials and representations from all parts of the country regarding a multitude of affairs delay would occur in sending the

representation to the Department and therefore the representation could not be expected to be considered as expeditiously as it could be

considered if it had been addressed to the appropriate Ministry. The Supreme Court did not accept this argument stating that even if due allowance

is given for the reasons stated by the detaining authority still 75 days" delay is a long delay and therefore continued detention is illegal. In that case

at least the representation was received by the Department but in our case the Governor's office has not chosen to sent the representation for

consideration at all.

4. In a Division Bench decision of this Court in an unreported Judgment of ""Thanthodri Perumal v. Government of Tamil Nadu"" W.P. No. 3843 of

1989 dated 8-2-1990 a similar point fell for consideration. In that decision in answering an argument that in the grounds of detention a copy of

which has been served on the detenu he has been informed that he shall send representation, if any, to the Chief Secretary but the representation

has been sent to the Governor and therefore the detaining authority need not consider that representation, it was held that.

simply because the detention order gives such a direction, it cannot be stated that the detenu cannot send the representation to the Governor.

It was further held,

Even though we fell that the representation could have been sent to Governor directly with certain ulterior object, we are unable to hold that the

Government can keep quiet without disposing the same on merits.

Now, as pointed out by Mr. Kumar, the detention order has been passed, as stated therein itself, "By order and in the name of the Governor".

Further the detention order reads,

..... the Governor of Tamil Nadu hereby directs that the said thiru Kaleel Ahamed (falsely styled as Sankar s/o. Venkataramiah) S/o.

Mohamed Ismail be detained and kept in custody in the Central Prison, Madras.

In this position of the matter if the representation has been sent to the Governor directly, and not sent to the Chief Secretary as the detenu was

informed to send, if any, that by itself will not render the representation inconsiderable.

5. What the learned Public Prosecutor argues is that merely because the petitioner has got an acknowledgment for something sent by him to the

Governor it cannot be presumed that he has sent a representation. This argument appears to us to be odd. In answer to the grounds taken that the

representation has been received by the Governor's office, in the counter it is stated that,

The Governor's office has since stated that the petition was acknowledged by the Governor's office

Therefore there is no denying the fact that the Governor's office has received the representation.

6. From all these it is clear that the representation sent on behalf of the detenu has not been considered at all. This would certainly make the

continued detention illegal. Therefore the petition is allowed and the petitioner is directed to be set at liberty forthwith.

7. Petition allowed.