

(2012) 03 MAD CK 0011
In the Madras High Court
Case No : H.C.P. (MD) No. 32 of 2012

James Raj

APPELLANT

Vs

District Collector and District Magistrate, Pudukottai District,
Pudukkottai and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

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

Citation : (2012) MLJ(Cri) 590

Hon'ble Judges : P. Devadass, J;N. Paul Vasantha kumar, J

Bench : Division Bench

Advocate : K.A.S. Prabhu, for the Appellant; A. Ramar, Additional Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasantha kumar, J.—This Habeas Corpus Petition is filed by the detenu, challenging the order of detention passed by the first

respondent, by his proceedings P.D.O. No. 02 of 2011, dated 11.4.2011, detaining the detenu as a ""Goonda"" u/s 3(1) 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, (for brevity ""the Act""). Now, he has been lodged at Central Prison, Trichy. Even though several

grounds were raised in the Habeas Corpus Petition to quash the Detention Order, the learned counsel for the petitioner has mainly focussed his

argument that the representation submitted by the detenu dated 10.6.2011 was not properly considered without any delay. The learned counsel for

the petitioner submitted that 10 days delay in considering the representation is not explained and therefore, the order of detention is to be quashed.

2. The learned Additional Public Prosecutor produced the dates for the said chart the receipt of the representation was received on 10.6.2011 and

remarks was called on 17.6.2011 and the remarks were received only on 1.7.2011 which means there is a delay of 14 days of which, 4 days are holidays.

3. We have considered the above submissions made by the respective learned counsel.

4. The chart containing the dates produced by the learned Additional Public Prosecutor establishes the following facts:

The representation was received on 16.6.2011, the remarks were called for on 17.6.2011 and the remarks was submitted on 1.7.2011. There is a

time gape of 14 days of which, only 4 days were holidays. Thus, the remaining 10 days of delay is not explained.

5. The said issue regarding unexplained delay in considering the representation of the detenu will vitiate the continued detention is no longer res Integra.

(i) In the decision in Rashid Sk. Vs. State of West Bengal, , the Hon"ble Supreme Court considered similar issue and held that any unexplained

delay in disposal of the representation would be breach of constitutional imperative and it would render the continued detention impermissible and

illegal the Hon"ble Supreme Court has held as follows:

The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without

its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be

defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to

personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

(ii) In the decision in Tara Chand Vs. State of Rajasthan and Others, and in the decision in Raghavendra Singh Vs. Superintendent, District Jail,

Kanpur and Others, the Hon"ble Apex Court held that any inordinate and unexplained delay on the part of the Government in considering the

representation renders the detention illegal.

(iii) In *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others*, the Hon''ble Supreme Court has held as follows:

The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the

representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which

received the representation 11 days after it was handed over to the jail Superintendent by the detenu, This avoidable and unexplained delay has

resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

.....

When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with

reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation

with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the

delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may

invalidate the order of detention as having infringed the mandate of Article 22(5).

(iv) In *Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others*, the Hon''ble Supreme Court held thus:

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.

(v) In the decision in *Rajammal Vs. State of Tamil Nadu and Another*, the Hon''ble Supreme Court, in paragraph Nos. 8 to 10, the Hon''ble

Supreme Court held thus:

8. 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. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, . The following observations of the Bench can profitably be extracted here (para 12 of AIR):

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.

9. The position, therefore, now is that 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 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.

10. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the

Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus,

there is some explanation for the delay till 9.2.1998. Thereafter the file was submitted before the Minister who received it while he was on tour.

The Minister passed the order only on 14.2.1998. Though there is explanation for the delay till 9.2.1998, we are unable to find out any explanation

whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on

14.2.1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the

Minister at the Headquarters 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.

(vi) In the decision in Solomon Castro v. State of Kerala (2001) SCC (Cr) 650 : LNIND 2000 SC 36, the delay between 9.4.1999 and

28.4.1999 having not been explained on justifiable grounds in disposing the representation, the order of detention was quashed.

(vii) In the decision in Sherene Vs. The Commissioner of Police, Office of the Commissioner of Police, Egmore, Chennai-8. and others, , this

Court accepted the ground of unexplained delay in considering the representation between 4.8.1998 and 25.9.1998 to set aside the order of detention.

(viii) Again in the decision in D. Karupppiah Vs. The Commissioner of Police and Another, , this Court accepted the ground of unexplained delay in

considering the representation between 17.4.2002 and 4.5.2002 and the order of detention was set aside.

(ix) In the decision in Fathima Sudha @ Esaki Sudha v. District Collector & District Magistrate, Tirunelveli District, LNIND 2008 Bmm 699 :

(2008) 2 MLJ (CrI) 906, the delay of seven days between 14.01.2008 and 22.01.2008 in communicating the rejection of representation was held

as a vitiating factor to sustain the order of detention.

(x) In the decision in Chellaswamy v. The District Collector and District Magistrate LNIND 2011 Bmm 395 out of the total delay of twelve days,

five days were holidays and remaining seven days being unexplained was held as a vitiating factor to sustain the order of detention.

6. This Court in H.C.P. No. 108 of 2011, dated 09.11.2011 (K.M., J. and G.M.A., J.), considered the issue regarding delay. In the said order,

the order dated 27.11.2010 made in H.C.P. No. 1385 of 2000 was relied on, wherein unexplained delay of four days was considered to be fatal to the further detention of the detenu and on that ground, the detention order was quashed. It is held in the said order dated 9.11.2011 that though no period is prescribed in Article 22 of the Constitution of India for the decision to be taken on the representation, the words ""as soon as may be contained in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the authority concerned. We have also considered similar issue in H.C.P. (MD). No. 635 of 2011 and by order dated 5.1.2012, set aside similar order of detention on the ground of unexplained delay. Applying the said settled position of law to the facts of the present case, the impugned Detention Order cannot be sustained. Hence, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the first respondent, in his proceedings P.D.O. No. 02 of 2011, dated 11.4.2011, is quashed. The detenu, by name, James Raj son of Arulanthu, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.