
(1992) 07 MAD CK 0042
In the Madras High Court
Case No : Writ Petition No. 2506 of 1992

Kalyani

APPELLANT

Vs

The Dist. Magistrate and Dist. Collector, Vellore and Another

RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 07 MAD CK 0042

Hon'ble Judges : K.M. Natarajan, J;Arumugham, J

Bench : Division Bench

Advocate : V. Gopinath, for the Appellant; S. Shanmughavelayutham, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.M. Natarajan, J.—Mrs. Kalyani, wife of the detenu Velu alias Velmurugan, has preferred this writ petition under Article 226 of the Constitution of India, seeking for the issue of a writ of habeas corpus to quash the order dated 27.12.1991 passed against her husband and set him at liberty.

2. The detenu came to the adverse notice as a habitual forest offender in view of the three cases referred to in the preamble portion of the grounds of detention and was detained on the basis of the ground case, by the District Magistrate and District Collector, North Arcot Ambedkar District, the first respondent herein, in exercise of the powers conferred u/s 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug offenders, Forest offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Act 14 of 1982), with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

3. Though Mr. V. Gopinath, learned counsel for petitioner, raised various grounds, he has confined his arguments to two points viz. delay in considering the detenu's representation and non-furnishing of documents asked for by the

detenu.

4. In Ground (d), the petitioner has stated that the representation of the detenu has not been considered expeditiously and not attended to immediately, and there is considerable delay and the authorities have failed to consider the representation effectively and properly. In Ground (j), the petitioner has stated that the bail application filed on behalf of the detenu was not brought to the notice of the detaining authority, and though in his representation, the detenu sought for copy of the bail petition wherein he has retracted the alleged confession, the same was not furnished to the detenu on account of which he was unable to make effective representation. Learned Counsel for the petitioner submits that the impugned order is liable to be quashed on these grounds.

5. It is to be noted that though the writ petition was filed on 19.2.1992 and time was taken from 30.3.1992 for filing counter, till date no counter is filed on behalf of the detaining authority. However, we propose to dispose of the case on perusing the records available with the Additional Public Prosecutor and hearing the arguments of either side.

6. When we questioned the Additional Public Prosecutor regarding the representation received from the detenu, he submitted that the representation dated nil was received from the Superintendent, Central Jail, on 17.2.1992; paragraph remarks were called for on 20.2.1992; the same was received by the Government on 11.3.1992 and put before the Under-Secretary on 13.3.1992; the Deputy Secretary dealt with the file on 14.3.1992 and secretary passed it on 16.3.1992; and on 17.3.1992 the Minister for Law processed the file and rejection order was issued on 18.3.1992. He would also submit that the detaining authority received the representation and called for parawar remarks on 26.2.1992 which were received on 2.3.1992. Except stating the dates, he has no explanation to offer for the delay at every stage though repeated opportunities were given. On perusing the records, we see that the representation received on 13.2.1992 was received by the Government on 17.2.1992 after a delay of four days. After the receipt of the representation, parawar remarks were called for on 20.2.1992 and there was again a delay of three days. There is a delay of nearly 25 days in getting the parawar remarks. This inordinate delay remains unexplained and vitiated the impugned order. In this connection, learned counsel for the petitioner relied on the decision in Mahesh Kumar Chauhan alias Banti v. Union of India 1991 L.W. CrL. 18 wherein it was held as follows:

"The next question is should or can the court in the absence of any explanation wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of very serious nature as in the present case? Our answer would be "Not at all".

In this connection, it will be relevant to make reference to the view expressed by Mathew, J. speaking for the majority in Prabhu Dayal Deorah Vs. The District

Magistrate, Kamrup and Others, which is as follows:

We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law.

Reverting to the facts of the present case as submitted by the learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25.8.1989 and the comments from the sponsoring authority was received by the department on 11.9.1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition Laid down in Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, we have no other option except to allow this and unexplained delay is in violation of the constitutional obligation enshrined in Art. 22(5) of the Constitution of India rendering the impugned order invalid.

The above quoted case was one where remarks were called for on 25.8.1989 and the same was received on 11.9.1989 by the Department and no explanation was forthcoming for the delay. The ratio Laid down is squarely applicable to the facts of the instant case and we held that the delay is unexplained and inordinate and the impugned order is liable to be set aside.

7. As regards the other contention about non-furnishing of copy of bail petition, wherein the detenu has retracted the alleged confession, and the order of rejection, learned counsel for the petitioner submitted that though such copies need not be sent along with the detention order, in view of the latest judgment of the Supreme Court, when copies of such documents are asked for by the detenu, the Detaining Authority/State Government should provide him such copies or give reasons for refusal if any. He drew our attention to the decision in Nityarani v. State of Tamil Nadu 1989 CrL. L.J. 139 (Mad), to which one of us (K.M. Natarajan, J.) was a party, and it was held therein as follows:

When in order to make an effective representation the detenu finds that certain documents are necessary to him, those documents have to be furnished to him with utmost colerity. While supplying documents, the Detaining Authority has duty to supply only those documents on which it relies on. But if the detenu applies for any documents which are merely referred to or even not referred to, within the possession of the Detaining Authority, they have to be supplied without delay because detenu alone knows what is the use of that document to project his case. If the documents are not supplied to him or supplied only along with the rejection of the representation, his right to make an effective

representation becomes curtailed. In such a case detention order could not be sustained. Even if, the documents applied for were not relied upon by the detaining authority and were not relevant, it cannot be said that no prejudice was caused to the detenu on account of non-supply of these documents in time because detaining authority cannot be a judge of what use the document may be put to by the detenu.

He also relied on a decision in *P. Balasubramaniam v. Joint Secy. to Govt. of India* 1990 L.W. CrL 316 wherein it has been held as follows:

A person whose liberty is deprived by an order of detention passed without his being asked to show cause, has been given a very precious right to make a representation, and for making such a representation, he may need some documents, which were not considered by the detaining authority and consequently not appended to the order of detention. He is the sole judge of the relevancy of the documents, because he alone knows what kind of representation he is going to make on the basis of the documents. No doubt, all the documents need not be supplied. Some of the documents may be withheld for security or other reasons of State, in which case it will be open to the Government to State, in respect of the documents that are not supplied, summarily the reasons for non-supply, and if these reasons are acceptable, the non-supply of the documents would not vitiate the order of detention. The stand of the Government that the detenu is not entitled to all the documents and only such documents as are relevant would be supplied to the detenu. The stand appears to be not acceptable. In the absence of any reason disclosed in the letter sent to the detenu, we are compelled to conclude that there was no valid reason for the respondent not supplying the documents, and the failure to supply the documents vitiates the order.

The ratio laid down in the above decisions squarely applies to the instant case. On the ground of non furnishing of copies asked for by the detenu also, the impugned order is liable to be set aside.

8. In these circumstances, the impugned order is liable to be quashed and is accordingly quashed. The writ petition is allowed and the detenu is directed to be set at liberty forthwith unless otherwise required in connection with any other case.