

(2008) 01 MAD CK 0126
In the Madras High Court
Case No : H.C.P. No. 1604 of 2007

Kannagi

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 02-01-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Madras Prohibition Act, 1937 — Section 4(1)
Penal Code, 1860 (IPC) — Section 328
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2008) 01 MAD CK 0126

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

Bench : Division Bench

Advocate : E. Kannadasan, for the Appellant; N.R. Elango Addl. 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 Govindaraj, husband of the

petitioner, as the said authority arrived at the subjective satisfaction that the detenu is a Bootlegger 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).

2.1. The order of detention dated 29.10.2007 came to be passed by the second respondent on the basis of the ground case said to have taken

place on 4.10.2007, complaint of which was given by one Palani. According to the complainant, on 4.10.2007, when he purchased and consumed

arrack sold by the detenu, he felt giddiness, burning sensation in eyes and stomach and vomited, he could not stand and became unconscious.

Based on the abovesaid complaint, the Inspector of Police, Kandili Circle registered a case in Crime No. 664 of 2007 for the offences punishable

under Sections 4(1)(i), 4(1)(aaa), 4(1-A)(ii) of the Tamil Nadu Prohibition Act read with Section 328 IPC. The police party found the detenu

selling arrack. The detenu was arrested on the spot and the contraband was seized. On chemical analysis, it was found that the arrack is mixed

with 6.7 mg. of atropine per 100 ml. arrack and the same is a poisonous substance.

2.2. Apart from the above, the detaining authority also took note of the four adverse cases pending against the detenu, viz., Crime Nos.103, 185,

433 and 570 of 2007 on the file of the Kandili Police Station, all for the offence punishable u/s 4(1)(aaa) of the Tamil Nadu Prohibition Act.

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

health, passed the impugned order.

3. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas

corpus to call for the records in proceedings No. C3/D.O. No. 97/2007, dated 29.10.2007 passed by the second respondent, to set aside the

same and to direct the respondents to produce the detenu, now detained and confined in the Central Prison, Vellore, before this Court and to set

him at liberty.

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

5. 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.

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

6.2. 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, .

6.3. 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, .

6.4. 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, .

6.5. 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 Vs. State of Tamil Nadu and Another, .

7. In the instant case, the impugned order of detention came to be passed on 29.10.2007. A representation was made on behalf of the detenu on

7.11.2007 and the same was received by the Government on 9.11.2007. The remarks of the detaining authority were called for on 12.11.2007.

Parawar remarks were called for by the detaining authority from the sponsoring authority on 12.11.2007 itself. The remarks of the sponsoring

authority were received by the detaining authority on 14.11.2007. However, a report was sent to the Government by the detaining authority only

on 24.11.2007, viz., after a delay of seven days, excluding three public holidays. This delay 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 some force as well as substance in this contention.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai 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.

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

Others, .

The delay which stands unexplained is fatal to 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 29.10.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.