

(2018) 02 MAD CK 0276
In the Madras High Court
Case No : 1668 of 2017

Kannan

APPELLANT

Vs

The State of Tamil Nadu & Ors.

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Constitution of India, Article 21, Article 22 -
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum

Citation : (2018) 02 MAD CK 0276

Hon'ble Judges : S.Vimala, T.Krishnavalli

Bench : Division Bench

Advocate : R.Ilayaraja, C.Ramesh

Final Decision : Allowed

Judgement

1. The petitioner is the husband of the detenu viz., Vasuki, W/o.Kannan, aged about 40 years. The detenu has been detained, as per the order of

the second respondent, dated 25.10.2017, under Section 2(b) of the Tamil Nadu Act 14 of 1982, branding him as ""Boot- Legger"". Challenging

the same, the petitioner has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused

the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument

on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The

learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon"ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay

in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no

prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the

Constitution of India.

5. We have considered the above submissions.

6. In this case, the Detention Order was passed on 25.10.2017. As against the same, the petitioner made a representation on 09.11.2017. The

remarks were called for by the Government from the Detaining Authority on 13.11.2017. The remarks were received on 27.11.2017. Thereafter,

the Government considered the issue and passed the order rejecting the representation on 04.12.2017. It is the contention of the petitioner that

there was delay of 4 days in receiving the representation and there was delay of 4 days on the part of the Government in considering the same.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon"ble Supreme Court has held that the right to life and liberty of a person is

protected, under Article 21 of the Constitution of India. The Hon"ble Supreme Court has further held that the procedural safeguards are required

to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged

activities of the detenu.

9. In *Sumaiya Vs. The Secretary to Government*, [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay

of three days in disposal of the representation made on behalf of the detenu/detenu would be sufficient to set aside the detention order.

10. In *Tara Chand Vs. State of Rajasthan and others*, [1980 (2) SCC 321], the

Hon"ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon"ble Supreme Court as well as this Court.

11. In the decision in JAYANARAYAN SUKUL v. STATE OF WEST BENGAL reported in AIR 1970 SC 675, it has been held that the

Government has to be vigilant in the governance of the citizens and that the representation should be considered as early as possible without any

delay.

12. If any representation is received prior to passing the order of detention, the four principles are to be followed in letter and spirit, which reads as

follows:-

First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the

detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of

any action by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be

laid down as to measure the time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be

vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise

its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board.

13. Applying the said dictum laid down by the Hon"ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an

inordinate and unexplained delay of 4 working days in receiving the representation and 4 working days delay on the part of the Government in

considering the same and therefore, the impugned detention order is liable to be quashed.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings

in C.O.C.No.73/2017, dated 25.10.2017 is quashed. The detenu, namely Vasuki, W/o.Kannan, aged about 40 years, is ordered to be set at

liberty forthwith, if he is not required for detention in connection with any other case.