
(1997) 08 MAD CK 0102
In the Madras High Court
Case No : H.C.P. No. 1169 of 1996

Karuppiyah alias Kabir

APPELLANT

Vs

The District Magistrate and The District Collector and Others

RESPONDENT

Date of Decision : 21-08-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 350
National Security Act, 1980 — Section 3(1), 3(2)

Citation : (1997) 2 CTC 297 : (1998) 1 LW(Cri) 164

Hon'ble Judges : S. Thangaraj, J;C. Shivappa, J

Bench : Division Bench

Advocate : B. Kumar, for the Appellant; S. Anbalagan, Additional Public Prosecutor for Respondent Nos. 1 and 2 and K. Kumar, for the Respondent

Final Decision : Allowed

Judgement

C. Shivappa, J.—The father of the detenu has preferred this petition, challenging the order of detention, dated 5.9.1996, passed by the District Collector, Ramanathapuram, in CrI.M.P. No. 3/NSA/96, in exercise of the powers conferred by Sub-Sections 1 (a) and (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as "the Act", in short), with a view to preventing him from acting in any manner prejudicial to the relationship of India with Sri Lanka and to the maintenance of public order.

2. The detaining authority has stated in the grounds of detention, that on 19.8.1996 at 2.00 A.M., the detenu and another Sivaperumal (detenu in H.C.P. No. 1183 of 1996) were found near the TV Tower in Rameswaram and seeing the Police Party, they tried to run away from the spot. The police entertained suspicion and surrounded them and on search found the detenu possessing five gelatin sticks, five detonators, a black cord of 30 cms. length of fuse wire kept in an yellow colour bag. He had a match box in his shirt pocket. The police party also found in possession of Sivaperumal, five gelatine sticks, five detonators, a black cord of 30 cms. length, a pen knife and jute thread of a length of 4 mets.

contained in another yellow colour bag. When enquired, the detenu voluntarily confessed his close contact with the LTTE Association, which is a banned organization in India and further stated that he used to visit Sri Lanka clandestinely and received training from LTTE to explode improvised explosives and in handling of different kinds of weapons and received gold chains or gold biscuits from them in return. He had further admitted that he along with Thiru. K. Sivaperumal had planned to blow up the TV tower at Rameswaram, in order to create terror, panic and alarm in the minds of the general public and Government officials and to bring the Government to a standstill. The properties found in his possession were seized under a mahazar in the presence of witnesses. They were arrested on the same day and a case was registered against them in Crime No. 178 of 1996 by Rameswaram Town Police for the offences under the Indian Penal Code and u/s 5 of the Indian Explosives Act, 1908 and remanded to judicial custody. The investigation further disclosed that he was frequently making clandestine visits to Sri Lanka for the purpose of supplying petrol, diesel, medicines and other contrabands to LTTE terrorists to aid them in their fight against the Sri Lankan Government. When they were in remand the order of detention was passed by the District Magistrate to prevent them from acting in any manner prejudicial to the relationship of India with Sri Lanka and to the maintenance of public order.

3. The explosives seized were subjected to examination and a report was called for. The Deputy Controller of Explosives, Sivakasi, on examination of the said explosives, has opined that they are explosives as defined in Schedule 1 of the Explosives Rules, 1983 and further stated that a licence is obligatory for possession, sale and use of the said explosives.

4. After the order of detention was passed Under Sections 3(1)(a) and 3(2) of the National Security Act, 1980, the detaining authority provided an opportunity to make representation in writing to the Central Government and also to have the assistance of a person of his choice, if he so desires, at the time of hearing by the Advisory Board.

5. The father of the detenu assailed the order of detention on various grounds, inter alia, contending that the detenu had been employed as a coolie helping the boat owners in fishing; he has no previous case of any sort; no previous conviction and the order of detention is a grave abuse of law, unwarranted and illegal. He denied that there is absolutely any material to connect the detenu with the occurrence, dated 9.8.1996 mentioned in the grounds or to show that the detenu had contravened Section 22 of the Customs Act. He has also alleged that the earlier occurrence on 19.8.1996 at 2.00 hours and the allegation that the Inspector of Police apprehended the detenu along with one Sivaperumal near TV tower are totally false to the knowledge of the police, and the police deliberately gave this version to the Press, which gathered the materials of their own and found the police version to be totally false. This was mentioned in the newspapers that were published a few days after 20.8.1996 but long earlier to

the passing of the order of detention. It is stated that on 19.8.1996, some police personnel from the Town Circle Police Station, Rameswaram came to the detenu's house where the petitioner and the detenu were residing and woke him up from his sleep and told that he was being wanted by higher officials in the said Police Station, and the detenu could answer the questions and come back in an hour's time, and he was taken to the Police Station on that day.

6. It is the case of the petitioner that the order of detention translated and given to the detenu in Tamil is highly defective and not a true or faithful translation of the English version and on that account, the detenu was gravely prejudiced in his right of making proper representation. On behalf of the detenu, a representation to the State Government was sent precisely to the address given in the grounds of detention, in Tamil, on 15.11.1996 and another representation was also sent to the Central Government, so that they may be considered and disposed of without any delay, after duly placing the same before the Advisory Board. However, there is unreasonable delay in the disposal of the said representation. Consequently, the order of detention is bad in law, and is liable to be quashed.

7. On behalf of the respondent No.3, a counter affidavit has been filed denying all the contentions raised in the petition, reiterating the grounds mentioned in the order of detention. In paragraph 6 of the counter affidavit, it has been stated that a representation, dated nil from Shri. M. Karuppaiah on behalf of detenu was received by the Central Government in the concerned Desk, Ministry of Home Affairs on 12.2.1997; that this representation was immediately produced for consideration and it was found that certain vital information required for its further consideration needed to be obtained from the State Government/Collector and District Magistrate, Ramanathapuram and the same was sought through a crash wireless message dated 14.2.1997. The required information was received by the Central Government on 27.3.1997 and in the concerned Desk on 1.4.1997 (28th, 29th and 30th were closed for holidays) the case of the detenu was put up before the Deputy Secretary, Ministry of Home Affairs, on 2.4.1997, who considered the same and put up the same with his comments before the Minister of State for Home Affairs on 7.4.1997 and the representation of the detenu came to be rejected on 7.4.1997. Thus, the representation was considered within 7 days excluding the holidays and there was no delay at any stage on the part of the Central Government in considering the representation of the detenu and in communicating the final decision taken in the matter, to the detenu.

8. The learned counsel appearing for the respondent No.3 submitted:

(a) that the representation was in Tamil and certain particulars were not mentioned in the representation; and

(b) because of the need for translation of the representation there was some delay in communication and if that is taken into consideration, there is no unreasonable delay in disposing of the representation of the detenu by the

Central Government.

9. Re. (a) The detenu has indicated in his representation the date of his detention, address and the place where detained. It is too much to expect the detenu to indicate every material to show that he had been denied the protection of either Article 21 or 22. A representation setting out the bare minimum precisely and clearly is sufficient. Even if not sufficient, it is the duty of the authority to get at the information without any loss of time, since liberty of subject is an extremely precious right.

10. Re. (b) Under Article 350 of the Constitution, every person is entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State and Tamil is shown as one of the language at Serial No. 16 in Schedule VIII of the Constitution. The detenu is entitled to make the representation in the language he knows and it is not appropriate for the authority to stifle the right for consideration of his representation on the ground of language barrier. The right to make representation and to have the same considered at the earliest flows from the constitutional guarantee of the right of personal liberty, the right which is highly cherished in the constitution. Therefore, the submission touching want of particulars and need for translations of the representation are not well founded and are liable to be rejected.

11. Though several contentions have been raised in the petition, the only contention raised on behalf of the petitioner is that though the petitioner sent the representation, the Government did not consider the same with reasonable and proper expedition. The stages at which delay was caused are not explained by those authorities in whose purview the delay occurred and the counter affidavit is of little value in this behalf.

12. The only question that remains for consideration is whether the delay in considering the representation invalidates the order of detention?

13. In order to decide this question, few dates are necessary. After receipt of the order of detention, a representation was sent on 15.11.1996, which was received in the Ministry of Home Affairs on 19.11.1996. The Desk Officer of the Central Government has received the representation and other connected records on 12.2.1997. Between 19.11.1996 and 12.2.1997, there has been a delay of more than 85 days. Thereafter, on 14.2.1997, parawise remarks were called for by crash wireless message and the required information was received by the concerned authorities only on 27.3.1997, though the message was received on 14.2.1997 itself by the detaining authority. Thus, there is a delay of 43 days in receiving the required information.

14. The Apex Court, in several decisions has held that any unreasonable delay in considering the representation of the detenu is sufficient to invalidate the order of detention. In *Niranjan Singh v. State of Madhya Pradesh*, 1974 1 S.C.J. 126, the Apex Court expressed the view that it is incumbent upon the State

Government to explain the inordinate delay in considering and rejecting the representation of the detenu, satisfying the Court that there was no such delay.

15. In *Mahesh Kumar Chauhan alias Banti Vs. Union of India and others*, , the Apex court has held that a representation of a detenu whose liberty is in peril and deprived should be considered and disposed of as expeditiously as possible; otherwise, the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is occurred in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the court.

16. In *Jayanarayan Sukul Vs. State of West Bengal*, , the Apex Court has held that any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

17. In *Kundanbhai Dulabhai Shaikh v. District Magistrate, Ahmedabad and Ors.*, : 1996CriLJ1981 the Apex Court has held that any delay in disposal of the representation is fatal to the order of detention. In the case, the representation remaining with the State Government for about one month and when sent to Central Government, comments were not furnished for a month, in such a situation, the Apex Court quashed the order of detention.

18. In all these decisions, the Supreme Court has emphasized the legal obligation of the appropriate Government to consider the representation of the detenu. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation as early as possible. Any delay would not only be an irresponsible act on the part of the appropriate authority, but also unconstitutional because the constitution enshrines the fundamental right of the detenu to have the representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities. Though no definite time is contemplated within which a representation should be dealt with, still it is a constitutional right of the detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case. If not considered expeditiously, in the words of Shelat, J., reported in 1969 2 SCWR 529 , "it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning".

19. 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 and it should not be guilty of infraction of a constitutional duty not only by inordinate delay in the consideration of the representation, but also by putting off the consideration till after the receipt of the opinion of the Advisory Board.

20. As we have already observed, there is no explanation by way of affidavit for this inordinate delay by the authorities who were responsible for it and the State has given no information as to why this long delay occurred. The inescapable conclusion in the present case is that the appropriate authority failed to discharge its constitutional obligation by inactivity, as a consequence the order of detention is liable to be set aside.

21. The petition is therefore allowed. The order of detention bearing Cr.M.P. No. 3/NSA/96, dated 5.9.1996, passed by "the District Collector, Ramanathapuram is set aside, and we direct that the detenu be set at liberty forthwith, if not required in any other case or not undergoing any sentence of imprisonment in connection with any case.