

(2024) 04 KL CK 0058
In the High Court Of Kerala
Case No : Writ Petition (Crl) No. 95 Of 2024

Maffiya M.K

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2024) 04 KL CK 0058

Hon'ble Judges : A. Muhamed Mustaque, J;M.A.Abdul Hakhim, J

Bench : Division Bench

Advocate : John Varghese, Sonu Augustine, Suvin R Menon, K.A.Anas

Final Decision : Disposed Of

Judgement

A.Muhamed Mustaque, J.

1. This writ of Habeas Corpus was filed by the wife of detenu challenging the detention order under the COFEPOSA Act, 1974. Though several grounds have been raised in this matter. We need not considered the challenge on those grounds. We find that challenge based on non consideration of the representation within three months is sufficient to release the detenu. The following date of events are relevant :-

Date of detention order -	20.05.2019
Date of execution -	17.10.2023
Representation submitted before the jail Superintendent by the detenu -	30.10.2023
Jail Superintendent forwarded in the e-mail address of the Deputy Secretary -	31.10.2023
Consideration of representation -	07.02.2024

2. The date is reckoned for the date of forwarding the representation, admittedly 99 days lapsed. However, the stand of respondents 1 to 3 was that representation was received only on 07.02.2024. Whether this is correct or not is the issue in this matter.

3. It is appropriate to refer the statement filed by the respondents 1 to 3 in this matter. Paragraph 17 of the statement reads as follows :-

"17. As regards the allegation that the representation of the detenu addressed to the Joint Secretary (COFEPOSA), it is respectfully submitted that the records were checked and observed that the detaining authority did not receive any representation of the detenu. However, while preparing the present counter affidavit-in-reply, the Central Jail, Poojappura, Thiruvananthapuram was contacted telephonically on 07.02.2024 to ascertain as to whether the detenu has made any representation to the detaining authority. The Central Jail, Poojappura after checking their records informed by return call that they had forwarded a representation of the detenu addressed to the detaining authority on the email id of the ex- Joint Secretary (COFEPOSA) on 31.10.2023. Thereafter, email accounts of all the concerned officers were searched to check as to whether the said representation was received from the ex-Joint Secretary (COFEPOSA) and found that no email, in this regard, was received from him. However, the said mail was finally found in the junk/spam box of Deputy Secretary (COFEPOSA). In this regard, it is pertinent to mention that the Jail Authorities had not forwarded any hard copy of the said representation addressed to the Joint Secretary (COFEPOSA)."

4. The statement itself would show that Superintendent was forwarded representation on 31.10.2023. It was received in the spam mail of the Deputy Secretary. The case of respondents 1 to 3 is that they never received the representation. It was only verified on 07.02.2024, when they contacted the Jail Superintendent, they found the representation in the spam mail. Therefore, they would submit that they received representation only on 07.02.2024. This according to us is unacceptable. It is true that there are no guidelines in this matter how a representation should be forwarded from the Jail Superintendent to Joint Secretary, who is the Detention Authority as well as to the Central Government. This has resulted in lapses in this matter. However, when we are looking into this matter in terms of Constitutionally protected right of a detenu, whatever the excuse one may have that cannot infringe a constitutionally protected right of a detenu.

Therefore, we are of the view that detenu is entitled to the constitutional protection as it was not considered within three months. In such circumstances, we are of the view that the continuation of detention will have to be interfered and the detenu has to be released as he has not been accorded with the constitutional protection as envisaged under Article 22(5). Accordingly, we order release of the detenu forthwith. In the meanwhile issue guidelines in regard to forwarding representations, we direct hereafter, the representation shall be

forwarded by all Jail Superintendent in following manner :-

(i) They shall forward e-mail copies both in the e-mail address of the Detention Authority as well as Central Government. The Sponsoring Authority immediate on detention order shall forward the relevant e-mail IDs of the concerned to the Jail Superintendent. Immediately on forwarding the e-mail copies physical copies also shall be forwarded all the authorities concerned.

(ii) We direct necessary instructions shall be issued by the DGP of the Prison to all Jail Superintendent in the Jail. DGP shall direct that if any laches on the part of the Jail Superintendent in following the guidelines in the directions as above will entail in disciplinary actions against such officers.

(iii) Registry of this Court shall forward a copy of this order today itself to the Jail Superintendent, Poojapura Central Prison for necessary action to release of the detenu today itself.

This writ petition is disposed of .