

(1989) 11 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 952 of 1989

Miss Grace Odarkar Lamptey

APPELLANT

Vs

L. Hmingliana and others

RESPONDENT

Date of Decision : 10-11-1989

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (1990) CriLJ 2323

Hon'ble Judges : S.M. Daud, J;D.N. Mehta, J

Bench : Division Bench

Judgement

Mehta, J.—The petitioner, who is a citizen of Ghana, has challenged the order of detention dated 13-4-1989 passed against her by the Detaining Authority under sub-section (1) of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and psychotropic Substances Act, 1988 (Act 46 of 1988). This Writ Petition can be disposed of on the narrow issue that the authorities concerned have not considered the representation made by the Detenu with the necessary promptitude and expedition.

2. The Detenu made a representation to the State Government as also the Central Government on 27-7-1989. The same was received by the Superintendent of Prison on 1-8-1989. The representation was despatched to Delhi on 5-8-1989. It is the contention of the Detenu that there was a delay of three days in despatching her representation to the Department at Delhi.

The representation was received in Delhi on 9-8-1989. On the same day, i.e., on 9-8-1989 the Department sent for parawise comments from the Government of Maharashtra as also from the Deputy Director of Narcotics. Since no reply was received, the Department sent a reminder on 22-8-1989. The parawise comments, which were dated 16-8-1989, were received by the Department on 28-8-1989. It is the contention of the Detenu that there was a delay of twelve

days in preparing the parawise comments. The comments of the Government of Maharashtra were also forwarded and received by the Department on the same day, i.e., on 28-8-1989. Thereafter the papers were pleaded before the Joint Secretary on 30-8-1989, and on the same day the Joint Secretary, after endorsing her recommendations, placed the papers before the Minister of State for Revenue. The Minister of State for Revenue placed the papers before the Finance Minister on 1-9-1989, and the Finance Minister rejected the same on 4-9-1989. The rejection memo dated 7-9-1989 was received by the Detenu on 18-9-1989. Therefore, here also, according to the Detenu, there has been a delay of eleven days.

3. Shri Gupte, learned Counsel appearing on behalf of the Detenu, contained that there has been a delay of several days in considering the representation of the Detenu and this would render the continued detention of the Detenu void. In support of his submission, Shri Gupte relied on two recent rulings of the Supreme Court on the same issue, i.e., unexplained delay in the disposal of the representation made by the Detenu. In the case of Aslam Ahmed Zaire Ahmed Shaik Vs. Union of India and Others, , Their Lordships of the Supreme Court, after reviewing various authorities on the same issue, observed :-

"Thus when it is emphasised and reemphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by a slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Art. 22(5) of the Constitution."

4. Again, in the case of Rama Dhondur Borade Vs. V.K. Saraf, Commissioner of Police and Others, . Their Lordships were pleased to state :-

"True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the words "as soon as may be" occurring in Art. 22(5) of the Constitution reflect that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

5. In the instant case, we have perused the affidavit-in-reply, and we have also heard the submissions of Shrimati Desai, the learned Public Prosecutor.

6. We do not find any plausible explanation for the delay between 1-8-1989, when the representation was received by the Superintendent of Prison, and 5-8-1989, the day on which the Superintendent of Prison despatched the representation to the Department at Delhi. Why it took the Superintendent of Prison as many as four days merely to despatch the representation is not clear from the affidavit-in-reply. Then, on 9-8-1989, the Department called for the parawise comments from the Deputy Director of Narcotics. On 22-8-1989, the Department at Delhi sent a reminder to the Deputy Director of Narcotics to expedite the despatch of the parawise comments. The parawise comments dated 16-8-1989 were received by the Department at Delhi on 28-8-1989. Once again, there appears to be no plausible explanation for the twelve days' delay in despatching the parawise comments in a case which entailed no complex facts or data.

7. The Minister of Finance rejected the representation of the Detenu on 4-9-1989. The rejection memo dated 7-9-1989 was received by the Detenu only on 18-9-1989, i.e., after a delay of eleven days. We find that at various stages there is an inordinate delay for which there is no explanation offered by the Respondents. That being the case, we must follow the ratio of the two citations referred to by us heretofore and come to the conclusion that there has been a breach of the Constitutional Mandate under Article 22(5) of the Constitution. That being the case the order of detention must be struck down.

8. In the result, the Rule is made absolute. The continued detention of the Detenu is struck down. The Detenu shall be released forthwith unless required in any other case.

9. Order accordingly.