

(1997) 11 MAD CK 0124
In the Madras High Court
Case No : H.C.P. No. 61 of 1997

Mohamed Badhusa

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1997) 2 CTC 756

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

Bench : Division Bench

Advocate : B. Kumar, for the Appellant; S. Anbalangan, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

C. Shivappa, J.—In this petition, an order of detention has been challenged by a friend of the detenu. The order of detention is dated 14.11.1996, bearing G.O.SR.I/1340-4/96, passed by respondent No. 1, in exercise of the powers conferred by Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA" Act, in short).

2. The facts which led to the detention, in brief, are; that on 18.9.1996, the detenu was intercepted by the Air Intelligence Unit Officer on suspicion at Anna International Airport, Chennai, while he was proceeding for security check after the clearance of immigration and customs formalities. On questioning and on detailed examination of his baggage and person in the presence of witnesses, it was found that US \$56,200 (562 notes of US \$ 100denomination) were kept concealed in two bundles in the two inner chest pockets of his coat and the same were recovered, as he was not in possession of any valid permit or licence issued by the Reserve Bank of India to export the foreign currency. The currency was

seized under a mahazar for action under Customs Act, 1962 r/w. Foreign Exchange Regulation Act, 1973. The travel documents viz., Malaysian Airlines Ticket No. 4: 232: 4419: 955: 498: 2 and Boarding Pass were also seized under the mahazar for investigation. The Air ticket used by him for the journey from Singapore to Madras was detained vide DR. No. 105260 dated 18.9.1996 pending adjudication under Customs Law.

3. The detenu was arrested on 19.9.1996 and produced before the Addl. Chief Metropolitan Magistrate (E.O.I.) Chennai who remanded him to judicial custody till 3.10.1996. The detenu filed a bail application on 19.9.1996 before the Addl. Chief Metropolitan Magistrate E.O.I), Chennai stating that he was innocent of the said offence and he did not commit any offence and the voluntary statement was obtained under threat, coercion and undue influence and retracted the earlier statement. The Customs authorities filed counter stating that the statement was given by the detenu without any threat, coercion or undue influence and it was made voluntarily. The court, by its order dated 1.10.1996, dismissed the bail application. On the request of the Customs Department remand period was extended upto 14.11.1996.

4. The State Government, after being satisfied with the facts and materials mentioned above, considered it necessary to detain the detenu under the Act, with a view to preventing him from smuggling goods in future. The detenu was also informed of his right to make representation to the detaining authority/State Government and also the Government of India, if he so desires, in writing, against the order under which he was kept in detention. He was also notified to address the said representation to the Secretary to Government of Tamil Nadu, Public (Law and Order) Department, Fort St. George, Cheimai-9, or the Secretary to Government of India, Ministry of Finance, Department of Revenue, (Cofeposa Section), Central Economic Intelligence Bureau, 6th Floor, B-Wing, Janpath Bhavan, Janpath, New Delhi-1, as the case may be and forward it through the Superintendent Central Prison, Vellore, in which he is confined as expeditiously as possible. He was also informed that he is entitled to be heard in person by the State Advisory Board and, if so desires, to make a representation before the State Advisory Board against the detention and send the same to the Chairman, State Advisory Board, High Court Buildings, Chennai, through the Superintendent, Central Prison, Vellore and such representation is without prejudice to his right to make oral representation before the State Advisory Board at the time of personal hearing by the Advisory Board and also to have the assistance of a friend other than a lawyer at the time of personal hearing by the Advisory Board.

5. Though the learned counsel for the petitioner, Mr. B. Kumar, has raised several contentions in the affidavit, but confined his argument to the only point that even though five copies of the representation were given to the Superintendent, Central Prison, Vellore, North Arcot, with a covering letter, requesting to despatch the representation to the authorities competent to revoke the order of detention,

the same was not despatched and the State Government is bound to send all the relevant materials received by it from time to time to the Central Government and thus, the constitutional right of the detenu guaranteed under Article 22(5) has got violated and hence the continued detention of the detenu has become illegal.

6. Respondent No. 3, the Superintendent, Central Prison, Vellore, has admitted in para 2 of the counter that only five copies of the representation were received in the Central Prison, Vellore, by registered (letter No. 1679, dated 2.12.1996) post on 3.12.1996 and denied the fact that there was any covering letter or letter requesting the Superintendent to send the representation to the authorities as stated in the affidavit. He has also admitted that the representation was forwarded to the Secretary to Government, Public Department, vide letter No. R1/C4/96, dated 3.12.1996.

7. On behalf of Respondent No. 2, Union of India, in paragraph 3 of the counter affidavit, it is stated that the representation dated 2.12.1996 in Tamil language has not been received in the COFEPOSA Unit of the Ministry of Finance, Government of India and hence the question of its consideration does not arise.

8. The point for consideration in this petition is whether non-forwarding or non-despatch of the representation dated 2.12.1996 to the authorities competent to revoke the order of detention has resulted in infraction of the constitutional right of the detenu under Article 22(5) of the Constitution of India.

9. It has to be noticed that the representation was not despatched to the Central Government and it is also on record that in paragraph 10 of the affidavit, it is stated that five copies of the representation were sent to the Superintendent of Central Prison, Vellore, North Arcot District, with a covering letter, requesting to despatch the representation to the authorities competent to revoke the order of detention. It is also stated by the Union of India, in paragraph 3 of the counter affidavit that no representation was received in the COFEPOSA Unit of the Ministry of Finance, Government of India. Thus, the fact remains that the representation was not despatched to the Central Government. Where there was a letter with a request to despatch the representation, if not despatched, it amounts to infraction of the right enshrined in Article 22(5) of the Constitution.

10. The Apex Court, in *Jai Prakash Vs. District Magistrate, Bulandshahar, U.P. and others*, has held that the Superintendent of the jail was under an obligation to send one copy of the representation to the Central Government. The Superintendent of jail sent the representation only to the State Government and not to the Central Government. When the detenu addressed a letter to despatch the representation, to the authorities competent to revoke the order of detention the Superintendent was legally bound to send one copy to the Central Government.

11. In *Alamelu v. State of Tamil Nadu and Ors.* AIR 1995 SC 539 the Apex Court has held that the constitutional right of the detenu under Article 22(5) has got

violated on account of non-sending of the copy of the representation by the Jailer to the appropriate authority of the Central Government as expeditiously as possible, after he received the representation.

12. This Court, in H.C.P.No. 1065 of 1996, decided on 20th June, 1997, in an identical situation, has observed that "failure to send a copy of the representation to the second respondent- Central Government is a colossal neglect of his official duty and the fact that he did not send any such copy of the representation to the Central Government, will greatly affect the valuable right inhering in favour of the detenu of making an effective and purposeful representation to the Central Government, under Article 22(5) of the Constitution of India. The fact that the 2nd respondent Central Government was unable to consider and dispose of the representation as a consequence of such copy of the representation not having been forwarded to it is no answer at all, and non-consideration of the representation, for whatever be the reason, by the second respondent-Central Government will serve as a factor, vitiating the impugned order of detention."

13. When the copies were despatched to the State Government, even thereafter, no attempt was made by any one to send the representation to the State Government, which is having a statutory power to revoke the order of detention. Under Article 22(5) of the Constitution, they are under legal obligation to dispose of the representation as early as possible. In the present case, it is not a delay in disposing of the representation by the Central Government, but, this is a case of non-despatch of representation received by the Superintendent of Central Prison, viz. respondent No. 2. If he has not despatched the same as expeditiously as possible when he received the representation with a covering letter, it is indicative of indifference and slackness and calous attitude on the part of the Jail Superintendent, it is this act of the jailor who failed to send one copy of the representation to the Central Government that infringed the constitutional right of the detenu under Article 22(5) of the Constitution. Therefore, we are of the view that the detenu was denied his right to get the representation considered by the competent authority and on that short ground, his continued detention is liable to be set aside.

14. For the reasons aforesaid, the petition is allowed and the impugned order of detention passed by the 2nd respondent in G.O.SR.I/1340-4/96, dated 14.11.1996 is set aside. The detenu is directed to be set at liberty forthwith, unless he is required to be detained connection with any other case.