

(2001) 01 BOM CK 0039

In the Bombay High Court

Case No : Criminal Writ Petition No. 82 of 1998

Mrinal Namdev Waghmare

APPELLANT

Vs

Smt. Reva Nayyar and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 10(1), 3(1)

Citation : (2001) ALLMR(Cri) 1583 : (2001) BomCR(Cri) 631 : (2001) CriLJ 1141 : (2001) 1 MhLj 946

Hon'ble Judges : B.P. Singh, C.J.; Vishnu Sahai, J; S. Radhakrishnan, J

Bench : Full Bench

Advocate : Rizwan A. Merchant, for S.A. Khan, for the Appellant; R.M. Agarwal, for Respondents 1 to 3 and Rajiv Patil, Asstt. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, C.J.—This Writ Petition has been filed by the petitioner, Mrinal Namdev Waghmare, claiming to be a friend of the detenu, Manivannan Mahadevan alias Ruben, a foreign national, for issuance of a Writ of Habeas Corpus for the release of the detenu, who has been detained by Respondent No. 1, the Detaining Authority, u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (for short, the PITNDPS Act) by an Order dated 30th September, 1997 with a view to prevent him from engaging in the possession, concealment, transportation and illicit drug trafficking of narcotic drugs.

2. This Writ Petition came up for hearing before a Division Bench of this Court. By an Order dated 7th and 8th September, 1999, the Division Bench has referred the matter for being placed before a larger Bench for resolving the apparent conflict between two decisions of this Court in Rafiq Abdul Karim Merchant Vs. Shri Rajendra Singh, Secretary to Government of Maharashtra, and Babulal

Vildaram Bishnoi v. Reva Nayyar, 1998 (6) Learned Judgments 1 (Criminal Writ Petition No. 1203 of 1996). The detenu in Criminal Writ Petition No. 1203 of 1996, viz., Harish Chutraram Bishnoi alias Rajubhai alias Harish, was apprehended along with the petitioner in the instant Writ Petition on 5th May, 1997. By judgment dated 28th and 29th September, 1998, a Division bench of this Court came to the conclusion that there was delay of 9 days in the disposal of the Representation of the aforesaid co-detenu dated 29th October, 1997, vitiating his continued detention. Consequently, the Detention Order and the Declaration u/s 10(1) of the PITNDPS Act was quashed.

3. The Division Bench, which had earlier heard this Writ Petition, was of the view that the delay in the disposal of the representation had been satisfactorily explained, but, in view of the fact that the Writ Petition of the co-detenu, Bishnoi, had been allowed, the matter required to be considered by a larger Bench. It was urged before the Division Bench that there was an apparent inconsistency between the two judgments of this Court which could be resolved only by a larger Bench. In view of the submission urged before it, the Division Bench referred the matter to a larger Bench, and that is how the matter has been placed before us under the order of the Chief Justice.

4. On 24th May, 1997, on the basis of secret information that a huge quantity of heroin, a narcotic drug, was being transported, the officers of the Narcotic Control Bureau (NCB), Mumbai, kept surveillance at Grant Road (East), Mumbai. They intercepted a white-coloured Maruti 1000 Car bearing Registration No. MH-04-X-488. The officers of the NCB disclosed their identity, and informed the occupants of the car of the purpose for which the car had been stopped. Ruben, the detenu in this case, came out of the car and made a bid to escape, but he was chased by one of the officers, who also fired from his service pistol as a warning to the fleeing detenu. The detenu was thereafter chased and apprehended with the help of the members of the public who had assembled. The car was thereafter searched after complying with the mandatory provisions of the PITNDPS Act. There were two occupants of the car, viz., the detenu in the instant case, Ruben, and co-detenu, Harish Chutraram Bishnoi. They revealed to the officers the secret cavity behind the rear seat of the vehicle, which was opened by Ruben, and from where three gunny bags containing 23 kg. of heroin in packets of one kg. each were recovered and seized under Panchanama drawn up immediately on the same day. It appears that the detenues had engaged two vehicles for the operation, and apart from the Maruti 1000 Car, in which they were travelling, there was another Fiat car bearing Registration No. MH-03-A-0906, which was kept as a stand-by car. The statements of the detenues were recorded and all other formalities complied with. The detenues were arrested on 25th May, 1997, and an Order of Detention was passed on 30th September, 1997. The Order of Detention as well as the grounds of detention were served upon the petitioner on 13th October, 1997. The necessary Declaration u/s 10(1) of the PITNDPS Act was issued on 21st October, 1997.

5. It appears that the petitioner made a representation to the Detaining Authority in Tamil Language. The case of the petitioner was that the representation was not disposed of. Therefore, the petitioner was compelled to file the instant Writ Petition before this Court on 21st January, 1998, and Rule was issued on the 10th February, 1998.

6. Four affidavits-in-reply have been filed in the instant Writ Petition. The first affidavit-in-reply has been filed by the Detaining Authority, Respondent No. 1, the second by the Jailor, Yeravada Central Prison, Pune, the third by S.S. Aswale, Investigating Officer of the NCB, and the fourth by R.S. Gawde, Intelligence Officer of the NCB, the Sponsoring Authority.

7. The sole ground on which the detention had been challenged before the Division Bench, as also before us, is that the petitioner made a representation to the Detaining Authority on 29th October, 1997, requesting for copies of all the documents in Tamil Language, but his representation was not considered, and no communication was received by the detenu till the date of filing of the Writ Petition on 21st January, 1997. It was thus submitted that there was failure on the part of the Detaining Authority to promptly dispose of the representation of the detenu in violation of Article 22(5) of the Constitution of India. Consequently, the continued detention of the detenu was illegal.

8. In the affidavit-in-reply filed on behalf of the Detaining Authority, it has been asserted that the detenu's representation dated 29th October, 1997 addressed to the Detaining Authority was received in the office of 10th November, 1997. Vide letter dated 12th/17th November, 1997, comments of the Sponsoring Authority were called for. It is pointed out that 14th November, 1997 was a restricted holiday, while 15th and 16th November, 1997 were closed holidays. After the receipt of the letter dated 17th November, 1997 on 20th November, 1997, the representation of the detenu was got translated. In the light of the representation, it became necessary to scrutinise and collect information from all concerned. Comments were prepared and forwarded on 1st December, 1997. It is pointed out that 22nd, 23rd, 29th and 30th December, 1997 were closed holidays. It is also stated that between 24th November, 1997 and 28th November, 1997, the concerned officer was engaged in secret surveillance work. The representation, along with the comments, was submitted before the Detaining Authority on 5th December, 1997, and after careful consideration of the same, it was rejected on the same day, i.e., on 5th December, 1997. The detenu was informed accordingly by Memo dated 8th December, 1997 (6th and 7th December, 1997 being closed holidays). The detenu acknowledged the Memo on 11th December, 1997. Thus, there was no delay in consideration of the representation and communication of the result of the said representation.

9. The affidavit of Aswale, Investigating Officer of NCB, highlights the fact that the detenu and co-detenu, Harish Chutraram Bishnoi, are a part of international drug trafficking racket, which has been operating under various assumed names.

10. Gawde of the NCB, the Sponsoring Authority, in his affidavit, has stated facts which are relevant for consideration of the question as to whether there was delay in the disposal of the representation. He has stated that the representation of the detenu, Ruben, dated 29th October, 1997 was received in his office on 20th November, 1997. He recollected that he gave the document on 21st November, 1997 for translation, which was in Tamil Language. The next two days, viz., 22nd and 23rd November, 1997, were holidays. From 23rd November, 1997 till 30th November, 1997, the deponent was on surveillance duty. This being a secret and confidential matter, there are no entries made in any record for fear of leakage of information resulting in serious repercussions. Such surveillance duty is performed by the concerned officers under oral instructions from superiors. He has further stated that during the said period that he was on surveillance duty, he could not come to office. He has further asserted that his efforts resulted in seizure of heroin and Mandrax Tablets on 22nd December, 1997.

On 1st December, 1997, he attended office, and immediately collected the translation of the representation, and contacted N. M. Malkani and A. P. Turilay, Intelligence Officers, and submitted his report, which was forwarded the same day by the Zonal Director Om Prakash. The deponent has craved leave to file affidavits of other officers who joined him in surveillance during the said period such as K. Ravi and J. S. Dubey to substantiate the contention that during the said period he was required to be away from office for the said purpose. He has asserted that these being the "secret surveillance cases" based on intelligence gathered from time to time, oral instructions are only passed on by superiors, to maintain secrecy. It is further stated that even in the case in question surveillance was going on for considerable period which fructified on the day of incident.

11. From the facts stated in the affidavits which we have noticed, it would appear that the petitioner has wrongly stated in the Writ Petition that the representation of the detenu was not considered, and the decision was not communicated to the detenu. It is obvious that much before the filing of the instant Writ Petition, the representation of the detenu was rejected on 5th December, 1997, and the same was communicated to him vide Memo dated 8th December, 1997, which he received on 11th December, 1997. However, as submitted by Counsel for the petitioner, this Court must consider whether the representation was disposed of promptly, and in case there was some delay in disposal of the representation, whether such delay has been satisfactorily explained.

12. It is by now well settled that a detenu has a constitutional right of making a representation to the Detaining Authority, which the Detaining Authority must consider promptly. There should not be any delay in the matter of consideration, though no hard and fast rule can be laid down as to the measure of time taken by the Appropriate Authority for consideration. Whether the Detaining Authority has considered the representation with reasonable despatch is a question which

must necessarily depend on the facts and circumstances of each case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention thereafter illegal. The time imperative for consideration of the representation can never be absolute or obsessive. It depends upon the necessity and the time at which the representation is made. In its referring order, the Division Bench has exhaustively dealt with the authorities on the subject, and we do not consider it necessary, in view of the settled legal position, to multiply authorities. We may only notice that reference has been made to the following decisions :-

- (1) Jayanarayan Sukul Vs. State of West Bengal, ,
 - (2) Rashid Sk. Vs. State of West Bengal, ,
 - (3) State of Orissa and Another Vs. Shri Manilal Singhania and Another, ,
 - (4) Mst. M.S. Ummu Saleema v. B.B. Gujaral AIR 1981 SC 1190 : 1981 Cri LJ 889,
 - (5) Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another, ,
 - (6) Vijay Kumar Vs. Union of India (UOI) and Others, ,
 - (7) Abdul Salam alias Thiyyan Vs. Union of India and others, ,
 - (8) Mohammad Jafar Vs. Union of India (UOI), ,
 - (9) Kamarunnissa and Others Vs. Union of India and another, ,
 - (10) K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, ,
 - (11) Frances Coralie Mullin Vs. W.C. Khambra and Others, ,
 - (12) State of Tamil Nadu and another Vs. C. Subramani and Others, ,
 - (13) Noor Salman Makani Vs. Union of India and others, ,
 - (14) Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others, ,
- and
- (15) Smt. Panna Waringe Vs. A.S. Samra and others, .

13. After considering the decisions aforesaid, the learned Judges were of the view that having regard to these decisions, particularly the decisions in Jayanarayan Sukul Vs. State of West Bengal, and K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, , each pocket of delay has to be considered on its own merit. There is no

hard and fast rule on any number of days, nor is there any arithmetical formula of a rigid time-frame within which the representation has to be considered. It depends on the facts of each case. The holidays, including Saturdays and Sundays, cannot be added so as to enlarge the time taken and treat it as unexplained delay. Some leeway has to be left to the procedure of the Government where the file moves from one officer to another, till it reaches the authority which has to take the decision in the matter.

14. The learned Judges have also noticed several decisions of this Court, which reiterated the law as laid down by the Apex Court. However, the Division Bench felt that some of the observations in Bishnoi's case 1998 (6) Lj 1 ran directly counter to the observations made by another Division Bench of this Court in Rafiq Abdul Karim Merchant Vs. Shri Rajendra Singh, Secretary to Government of Maharashtra, . The learned Judges, however, were of the view that the facts of the instant case were distinguishable from the facts in Bishnoi's case inasmuch as the representation in Bishnoi's case was in Hindi, and in the present case the same was in Tamil. Secondly, five statements of Bishnoi were recorded by one Intelligence Officer, viz., Kavitkar, whereas as many as 9 statements of Ruben were recorded by two different officers, viz., Malkani and Turilay. The time taken for ascertaining the comments of the two officers, as to whether torture or ill-treatment was practised on the detenu while recording any of the said 9 statements assumed importance, having regard to the time taken for disposal of the representation, which in their opinion, was not at all unduly long. If the holidays were excluded, the first pocket of two days delay could not be said to be unreasonable or unduly long, having regard to the ratio of the decisions of the Apex Court.

15. We shall first consider the two judgments of this Court in Rafiq Abdul Karim Merchant Vs. Shri Rajendra Singh, Secretary to Government of Maharashtra, and Babulal Vildaram Bishnoi 1998 (6) Lj 1. Incidentally, both the judgments were rendered by one of us (Vishnu Sahai, J.).

16. In Rafiq Abdul Karim Merchant, the detenu had made his representation on the 4th March, 1997, which was received by the Ministry on 18th March, 1997. On the following day, i.e., on 19th March, 1997, comments were called for by the Ministry and, on the 21st March, 1997, the comments of the Sponsoring Authority were sent to the Ministry, which were received in the COFEPOSA Unit of the Ministry on 26th March, 1997. On 27th March, 1997 the comments and papers were processed by the Under Secretary. 28th, 29th and 30th March, 1997 were holidays. On 4th April, 1997, the Joint Secretary called for the report about the opinion of the Advisory Board, which was received by the Sponsoring Authority on 7th April, 1997. The Sponsoring Authority submitted its comments on 9th April, 1997, which was received by the Ministry of Finance on 17th April, 1997. 18th to 20th April, 1997 were holidays, and on 22nd April, 1997, the comments were processed by the Under Secretary, and submitted to the Joint Secretary. On 23rd April, 1997, they were referred to the Secretary, Revenue,

who on 24th April, 1997, rejected the representation which was communicated vide Memo dated 25th April, 1997. In these facts and circumstances, the question arose whether there was inordinate and unexplained delay for the period between 21st March, 1997 and 3rd April, 1997. After considering the authorities cited at the Bar and in particular, the decision of the Supreme Court in Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, , the learned Judges observed that the Supreme Court frowned upon the delay in disposal of the representation on dates other than holidays. The submission urged on behalf of the petitioner in that case that the intervening holidays added to the delay and the existence of the holidays was not valid explanation in law, was rejected. The learned Judges, therefore, excluded the holidays, and examined the four days delay between 31st March, 1997 and 3rd April, 1997. After referring to several authorities of the Supreme Court and a few Division Bench decisions of this Court, it was observed that the principle laid down was that the representation should be disposed of with utmost expedition; the time imperative in the disposal of a representation can never be absolute or obsessive; the law does not require that each day's delay in the disposal of the representation should be explained; there should be no negligence or callous inaction or avoidable red-tapism in the disposal of the representation; and if there has been delay in the disposal of the representation, the same should be satisfactorily explained. The learned Judges also noticed the decisions of the Supreme Court in Mst. M. S. Ummu Saleema 1981 Cri LJ 889, Mohammad Jafar Vs. Union of India (UOI), and Noor Salman Makani Vs. Union of India and others, , and observed that in each of the said cases, the Apex Court observed that the delay was there, but it was not sufficient to fault the continued detention of the detenu on the anvil of laches or indolence or red tapism in the disposal of the representation. It, therefore, held that the four days" delay between 31st March, 1997 and 3rd April, 1997 in disposal of the detenu"s representation could not be castigated as unreasonable, vexatious or inordinate. The learned Judges, on the basis of the judgments referred to in paragraph 24 of the report, observed that in two of them, there was a delay of 6 days, and in one, there was a delay of 5 days in the disposal of the representations, and still the Apex Court held that the delay did not vitiate the continued detention of the detainees. The learned Judges summarised the law in the following words :-

Before parting with the second point (whether four days delay is so unduly long that it vitiates the continued detention of the detenu) we would like to emphasise that there can be no mathematical formula having universal application prescribing the time limit within which the representation of the detenu in a case under the preventive detention has to be disposed off. The law only requires :

- (a) it should be disposed off with the utmost promptitude and there should be no indolence or lethargy on the part of the authorities in disposing off the same; and
- (b) in case there is delay in disposal of the representation the same should be satisfactorily explained.

We feel that in the final analysis the detention order would not be vitiated on the consideration that the representation of the detenu was disposed off belatedly but on the ground that either there was complete absence of explanation or the explanation offered was untenable and unconvincing. In other words there may be cases where on account of satisfactory explanation a long delay in disposal of representation may not be fatal. On the converse there may be cases where the delay in the disposal of representation may be relatively short but still the detention order would be vitiated either because there is no explanation or that offered is unworthy of acceptance.

17. It would thus appear that in *Rafiq Abdul Karim Merchant Vs. Shri Rajendra Singh, Secretary to Government of Maharashtra*, a Division Bench of this Court took the view that the existence of holidays was itself a sufficient explanation and further that the delay of 5-6 days would not necessarily vitiate the continued detention of the detenu. Such delay was not sufficient to fault the continued detention of the detenu on the anvil of laches or indolence or red tapism in the disposal of the representation.

18. In *Bishnoi's case* 1998 (6) Lj 1, which related to the detention of the co-detenu, facts were similar. The Order of Detention was served on the detenu on 13th October, 1997, and the detenu submitted his representation on 29th October, 1997. The representation was received by the Detaining Authority on 10th November, 1997 and on 12th/17th November, 1997, the comments were called for by the Detaining Authority. It was noticed that 14th November, 1997 was a restricted holiday, whereas 15th and 16th November, 1997 were closed holidays. The communication asking for comments was received by the Sponsoring Authority on 20th November, 1997. 22nd, 23rd, 29th and 30th November, 1997 were all holidays. It was stated in the return filed on behalf of the Detaining Authority that the concerned officer was on surveillance duty between 24th and 28th November, 1997. The comments were sent to her on 1st December, 1997, which were received by the Detaining Authority on 5th December, 1997. The representation was rejected on the same day.

On these facts, the question arose whether the representation had been disposed of promptly and without inordinate delay. It was submitted on behalf of the petitioner in that case that there was unexplained delay, and that there were two pockets of delay relating to the periods between 12th and 17th November, 1997 and 20th November and 1st December, 1997. The learned Judges, after noticing the authorities cited at the Bar, observed that there is no rule of thumb having universal application that if a representation is disposed of within a certain number of days, it would be deemed to have been disposed of at the earliest. It would all depend on the facts and circumstances of each case. Whether or not the State Government has, in a given case, considered the representation made by the detenu as soon as possible, in other words, with reasonable despatch, must necessarily depend on the facts and circumstances of that case. Having regard to the principles so enunciated, the learned Judges considered the first

pocket of delay which related to the period between 12th and 17th November, 1997. It was noticed that 14th, 15th and 16th November, 1997 were holidays. Though it was observed that the Detaining Authority could have dispatched the letter on 12th November, 1997, or at least on the following day, the learned Judges proceeded to exclude the holidays, and observed that there was at least a delay of two days in the first pocket.

19. Dealing with the second pocket, i.e., between 20th November, and 1st December, 1997, the learned Judges felt the need to peruse the original file which was produced before them. From the original file, the learned Judges found that though in the affidavit, R.S. Gawde, Intelligence Officer, had averred that he was on surveillance duty right from 23rd November, 1997 till 30th November, 1997, there was nothing in the original file to substantiate this delay. Gawde had averred that surveillance duty was treated as confidential, and no entries in that behalf are made. This explanation did not find acceptance by the Bench for two reasons. It was observed that even if the name of the person in relation to whom surveillance was being made, and the place where the officer had gone in connection with surveillance, may not be mentioned on the file to prevent leakage of information, there was no reason why the file did not mention the fact that the officer had gone in connection with surveillance, without disclosing further details, so as to maintain secrecy and confidentiality. Secondly, the learned Judges observed that, according to the Detaining Authority, the officer was on surveillance duty between 24th November, 1997 and 28th November, 1997, whereas Gawde stated that he was engaged in surveillance from 23rd November, 1997 to 30th November, 1997. To say the least, the averment in one of the two affidavits was wrong. Thirdly, it was observed that, at any rate, Gawde could have entrusted the file to the Superintendent or Assistant Director or Zonal Director, NCB, because the Hindi translation of documents was already completed on 21st November, 1997, and the only fact to be enquired was whether the statement of the detenu was voluntary or forcibly procured by Kavitkar. For these three reasons, it was held that the delay in the disposal of the representation between 23rd November, 1997 and 30th November, 1997 had not been satisfactorily explained by the Respondents therein.

20. The learned Judges observed that in a decision of the Supreme Court in Gazi Khan alias; Chotia Vs. State of Rajasthan and another, , the Apex Court had held that the delay in the disposal of the representation between 3rd and 9th July, 1989 had not been explained. Though 8th and 9th July, 1989 were holidays, the Supreme Court included them for computing the duration of delay. Reference was also made to a decision of the Supreme Court rendered on 10th June, 1998 in Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another, , in which the Court observed :

Though the delay is not long it has remained unexplained. Though the delay by itself is not fatal the delay which remains unexplained, becomes unreasonable.

21. It was also held that the two pockets of delay in the disposal of the

representation can be added up and thus there was really a delay of 9 days in that case, which was inordinate. The notice of the Bench was drawn to the various decisions of the Supreme Court which have been noticed in paragraph 24 of the report, where the Apex Court refused to quash the detention on the ground that there was delay of 6 days or 5 days. A Division Bench decision of this Court was also brought to their notice in this connection. The Division Bench thereafter observed :-

25. We have perused the decisions cited by Mr. Agarwal and in our view they would have no application on the facts of our case. The said decisions were rendered on the facts and explanation in each of them. And as the Supreme Court held in *Rashid Sk. Vs. State of West Bengal*, and *Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others*, . . . that the issue of delay in considering representation has to be decided on the facts and circumstances of each case.

22. Having carefully perused the two Division Bench judgments of this Court, we do not find that there is any inconsistency so far as the ratio of the two decisions is concerned. In both the cases, it was rightly held, relying upon a catena of decisions of the Supreme Court, that the representation made by the detenu has to be disposed of at the earliest, and if there has been any delay in the disposal of the representation, the concerned authority must furnish a satisfactory explanation for the same. Only such delay as is unexplained, or where the explanation offered is found to be unsatisfactory, would adversely affect the continued detention of the detenu. The Bench noticed the decisions of the Supreme Court which lay down the principle that there is no hard and fast rule to measure the time taken by the Appropriate Authority for consideration and disposal of the representation, and the question whether the authority has considered the representation with reasonable despatch, must necessarily depend on the facts and circumstances of each case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. Having done so, the learned Judges considered the material on record, and while in the case of *Rafiq Abdul Karim Merchant Vs. Shri Rajendra Singh, Secretary to Government of Maharashtra*, , recorded a finding that the delay was not sufficient to fault the continued detention of the detenu on the anvil of laches or indolence or red-tapism in the disposal of the representation, in the case of *Bishnoi* 1998 (6) Lj 1, found the delay to be inordinate, and the explanation furnished for the delay to be untenable and unconvincing. Both the cases have been decided on their own facts, and rightly so.

23. It is open to the Court to consider the explanation furnished and the material on record, and come to its conclusion as to whether the delay in the disposal of the representation, if any, has been satisfactorily explained. We do not find that the two decisions of the Division Bench lay down any other principle inconsistent with each other.

24. It was submitted before us that in the case of *Rafiq Abdul Karim Merchant*

Vs. Shri Rajendra Singh, Secretary to Government of Maharashtra, , this Court held that the delay of 5 days was not very significant, and that, in the reported decisions as well, the Supreme Court did not hold that for such delay the continued detention of the detenu would be vitiated, but in Bishnoi's case 1998 (6) Lj 1, the Division Bench took a different view. We do not agree, because in Bishnoi's case, the delay of two days in the first pocket and of 7 days in the second pocket was sought to be explained. The explanation furnished by the Respondents therein did not find acceptance, and, therefore, the delay remained unexplained. It was pointed out to us that, in Bishnoi's case, while considering the delay in the first pocket, i.e., between the 12th and 17th November, 1997, the learned Judges took note of the holidays that intervened, and excluded those days, in calculating the days of delay. In the second pocket, however, while calculating the total delay, i.e. between 20th November, 1997 and 1st December, 1997, the learned Judges did not exclude the holidays, despite noticing the fact that 22nd, 23rd, 29th and 30th November, 1997 were closed holidays. In the referring order as well, the learned Judges have noticed this fact. In our view, there is no inconsistency in the approach of the learned Judges. In Bishnoi's case, the explanation furnished by Gawde in his Affidavit dated 25th September, 1998 was that between 23rd November, 1997 and 28th November, 1997, he was busy in surveillance work. For the three reasons mentioned by us earlier, the learned Judges did not accept the said explanation. Hence, they took the view that the delay during the said period remained unexplained. We may notice that during this period, according to the Respondents, there were four days which were holidays. Since the explanation furnished by the Respondents for the entire period was rejected by the learned Judges, there was no occasion for the learned Judges to consider whether the days on which the offices were closed ought to be excluded, as those four closed holidays fell within the period in question. If the reason furnished in explaining the delay during a specific period is itself found unacceptable by the Court, as was the case in Bishnoi, the mere circumstance that during that period there was some holidays would not result in the exclusion of those holidays while computing the delay.

25. In the view that we have taken, all that now remains to be considered is whether in the instant case, there is inordinate and unexplained delay in the disposal of the representation by the Detaining Authority.

26. The contention of the petitioner is that, though the representation of the detenu was received by the Detaining Authority on the 12th November, 1997, comments from the Sponsoring Authority were called for only on the 17th November, 1997. It is not disputed before us that 14th November, 1997 was a restricted holiday and 15th and 16th November, 1997 were closed holidays. If we exclude these three days, there is hardly a delay of two days which we do not consider to be very serious and not such as to render the continued detention of the detenu illegal.

On 20th November, 1997, the communication asking for comments was received

by the Sponsoring Authority, and on the very next day, i.e., 21st November, 1997, the Sponsoring Authority entrusted the matter to his office for translation of documents. 22nd and 23rd a November, 1997 were, admittedly, holidays. Thus, there was no delay till the 23rd November, 1997. However, the comments of the Sponsoring Authority were sent on 1st December, 1997. The question arises as to whether there is sufficient explanation for the delay that occurred between the 23rd November and 1st December, 1997. In the referring order, the learned Judges have referred to the fact that while, in Bishnoi's case, the statements made by him were in Hindi, in the instant case, there are 9 statements in Tamil which were recorded by two officers. There was also an allegation that the detenu had been tortured and compelled to make incriminatory statements. It was, therefore, necessary to verify whether the detenu knew only the Tamil Language or also knew English. The averment made by Gawde, the Sponsoring Authority, that he collected the translation on the 1st December, 1997, and on the very same day, he contacted Malkani and Turilay, the two Intelligence Officers, who had recorded the statements of the detenu, and submitted his report on the same day, would show that he acted with promptitude. What, however, has to be considered is his explanation for his absence from 23rd to 30th November, 1997. In his affidavit-in-reply, he has explained that between 23rd and 30th November, 1997, he was on secret surveillance duty. He has further explained that with a view to maintain secrecy and confidentiality, such directions given by superior officers are not recorded in the file for fear that the information may be leaked out, and the plan defeated. He has submitted that, pursuant to his secret surveillance duty, he was ultimately able to recover 1.700 kg. of heroin and two Mandrax Tablets, which were recovered on 22nd December, 1997. He was, therefore, absent from his office between 23rd and 30th November, 1997, as he was on official duty, and could not attend his office during this period. If the explanation furnished by Gawde is accepted, there was really no delay on his part in dealing with the representation of the detenu. He could not have sent his comments before the 21st November, 1997, as the documents required translation. The 22nd and 23rd November, 1997 were holidays, and from 23rd to 30th November, 1997, he was on surveillance duty. It is true that there is nothing in the file to show that Gawde was deputed on secret surveillance duty, but the explanation offered by Gawde mentions the fact that such matters are not recorded in the file with a view to maintain secrecy, as the leakage of such information adversely affects the secret plans of the Sponsoring Authority to apprehend drug peddlers. Though there is nothing in writing, there is also nothing which would persuade us to reject the explanation offered by Gawde. Intelligence officers of the Bureau are deputed on secret surveillance duty. The network of drug peddlers operate with utmost secrecy, and utmost secrecy is also required to be maintained by the authority in its effort to discover facts, and resort to secret surveillance becomes necessary, without which, it would not be possible to collect material and to apprehend the culprits. If such a secret inquiry is proposed to be made, it would be fatal to such an inquiry if it becomes known that such a secret inquiry has

been undertaken. While it is true that, without disclosing the identity of the suspects, or the place where he is required to perform secret surveillance duty, it may be possible to record in the file that the concerned officer has been deputed on surveillance duty. If it is so recorded, no difficulty arises; but the question still remains that if it is not so recorded, would that be sufficient to reject the explanation offered by the Intelligence officer Gawde. On the basis of the material on record, we are satisfied that Gawde's statement on oath is worthy of credence. We find no good reason to disbelieve his statement, and we must, therefore, hold that between 23rd and 30th November, 1997, he was on surveillance duty and unable to attend his office. If we accept his explanation, there was really no delay, except for the delay of two days earlier noticed, which, in our opinion, does not vitiate the continued detention of the detenu.

27. It was submitted before us on behalf of the petitioner that, while considering the delay in the disposal of representation of detenu, the delays that took place at different stages must be clubbed together with a view to come to a conclusion as to whether there was inordinate and unexplained delay in the disposal of the representation. On the other hand, it was contended on behalf of the Respondents that the delays that may occur in two or more pockets may be considered separately, and should not be clubbed together. In our view, no rigid formula can be laid down in this regard. The Court must: consider the totality of evidence on record, and thereafter reach a conclusion as to whether the Detaining Authority is guilty of inordinate and unexplained delay in disposing of the representation. It all depends upon the facts and circumstances, of each case, and therefore, it is not advisable to lay down any rigid formula in this regard. What has to be considered by the Court is whether the Detaining Authority and its subordinates did not take prompt steps for the disposal of the representation, resulting in inordinate and unexplained delay. It matters little whether the delay was only at one stage of the consideration of the representation or at different stages. In fact, in an appropriate case, if the Court finds that at all stages the authorities concerned have not acted promptly, it may well lead to the conclusion that the authorities have acted in a casual manner, oblivious of the special responsibility cast upon them to deal with the case of a detenu who is detained without a trial. As we have observed earlier, it depends upon the facts and circumstances of each case, and the consideration of the Court must be in the light of the totality of the material and evidence on record.

28. We are, therefore, of the view that there has been no inordinate and unexplained delay in the disposal of the representation of the petitioner in the instant case. We, therefore, find no merit in this Writ Petition, and the same is, accordingly, dismissed. Rule discharged.