
(2010) 05 KL CK 0034

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 68 of 2010 (S)

Preman C.G.

APPELLANT

Vs

The Sub Inspector of Police and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2010) 05 KL CK 0034

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : P.K. Sajeev, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner is the father of the detenu Prajeesh, who has been detained as per Ext.P6 order dated 12/10/2009 passed by the 3rd respondent u/s 3 of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as KAAPA). The said detenu was arrested on 28/12/2009. The order of detention was approved u/s 3 of the KAAPA by the Government under Ext.P10 order on 07/01/2010. The records placed before us further show that the reference was made u/s 9 by the Government to the Advisory Board on 08/01/2009 and the Advisory Board furnished its opinion u/s 10 on 25/2/2010. The order confirming the detention of the detenu u/s 10(4) was passed on 03/03/2010 and the same was served on the detenu in jail on 09/03/2010. The detenu continues under detention as he was ordered to be detained for a period of six months from the date of his arrest. Such detention is authorised for a period of six months from 28/12/2009.

2. We have heard the learned Counsel for the petitioner and the learned Government Pleader. It is unnecessary to advert to the details of the cases registered against the detenu as there is no dispute raised before us on the question that the detenu answers the definition of a known rowdy u/s 2(p) of

KAAPA on the date of his detention. We shall hence not advert to those unnecessary details.

3. The learned Counsel for the petitioner assails the impugned order only on the following three grounds:

i) There was delay in executing the order of detention for a period of 76 days and that vitiates the subjective satisfaction entertained by the detaining authority.

ii) Ext.P11 representation submitted by the petitioner to the Advisory Board has not been considered by the Advisory Board.

iii) Copy of the rowdy sheet allegedly opened at the Kodakara/Kodungalloor police station referred to in the report of the Sponsoring authority and the detention order passed by the detaining authority has not been furnished to the detenu along with the order of detention or later.

4. Ground No. (i): The order of detention Ext.P6 is dated 12/10/2009. Arrest in execution of Ext.P6 was effected only on 28/12/2009. There was thus a delay of 76 days in executing the order of detention. The learned Counsel for the petitioner relying on various precedents, the last of which is rendered in *Soja Beegum v. Additional Chief Secretary to Government 2009(4) KLT 550*, contends that this amounts to inordinate delay vitiating the subjective satisfaction allegedly entertained by the detaining authority. A grievance has been raised in the writ petition that there has been inordinate delay. That contention is not even adverted to in the counter affidavit filed by the 3rd respondent. The learned Counsel for the petitioner, in these circumstances, contends that this delay of 76 days from 12/10/2009 to 28/12/2009 must be held to be vital and crucial. The order of detention is hence vitiated. The same deserves to be set aside, it is urged.

5. How many days delay can be reckoned as crucial, vital and costly as to vitiate the order of detention? This is the question to be considered. We had occasion to consider the same question in *Soja Beegum (Supra)* and we have observed thus in paragraph 16 of the said judgment.

16. As to what gap of time would be crucial or costly, there can be no rigid standards. In fact, a perusal of the decisions referred above as also the other decisions show that even a gap of time of 1 = months had been held to be fatal in some cases whereas in some other cases even the gap of three years has been held to be not fatal. The significance and the consequence of the delay must vary from facts to facts. In the instant case, what appeals to us particularly is the fact that the detaining and executing authorities must have known that the detenu, who was on bail in the only three cases relied on by the detaining authority, can easily be located in the courts on the date of posting or in the alternative the courts concerned could have been requested to insist on the presence of the detenu. Such courts could have been prevailed upon to insist that the detenu must appear and his sureties must produce him before such

courts. On the contrary, we find that even when he actually appeared, no effort was made at all to arrest the detenu.

6. In the instant case, except a contention that there has been such delay in the execution of the order, we find that there is no specific assertion that the detenu was available readily and easily for the authorities to execute the order of detention. In the facts and circumstances of this case, we are unable to agree that the delay of 76 days can be reckoned as vital and crucial as to hold that the subjective satisfaction entertained by the 3rd respondent and consequently Ext.P6 order is vitiated and hence liable to be set aside. A perusal of the precedents on the point reveals that in the facts and circumstances of each case, the court has to come to a conclusion as to whether the delay in execution can be reckoned as sufficient to vitiate the order of detention. In *Soja Beegum* (Supra), there was evidence to show that the detenu must have been available for arrest if the detaining authorities were serious in effecting the arrest.

7. We must say that we are dissatisfied that the 3rd respondent or any other respondent has not chosen to explain the delay of 76 days in executing the order of detention. But we are not persuaded to hold that such absence of explanation by itself, in the facts and circumstances of the case, is sufficient to invalidate the order of detention and direct release of the accused. The challenge on ground No. i) therefore fails.

8. Ground No. ii): The learned Counsel for the petitioner then contends that Ext.P11 representation dated 10/01/2010 submitted by the petitioner to the Chairman, Advisory Board has not been considered by the Advisory Board. Records have been perused and we find that this contention is factually incorrect as it is seen that the Advisory Board had the said petition Ext.P11 before it, had called for explanation from the authorities and had considered the said representation. Even otherwise, we are unable to agree that the representation given by someone other than the detenu like the one in Ext.P11 can be reckoned as representation by the detenu, the consideration of which is mandatory under Article 22(5) of the Constitution of India. In this context, we refer to paragraph 11 and 19 of our decision in *Vilasini Manikandan Vs. State of Kerala*, wherein it has been held that a representation made by persons other than the detenu cannot be exalted to the status of a representation of the detenu under Article 22(5) of the Constitution of India and Section 7 of the KAAPA as to hold that the non-consideration of the same would vitiate the continuance of the detention. We do not think it necessary to extract the said paragraphs 11 and 19; but we note that the said question is considered in detail there. In this case the detenu had not made any representation. Ext.P11 does not show that it had been submitted specifically on behalf of, or authorised by or in the name of the detenu. It had actually been considered by the Advisory Board also. The challenge fails.

9. Ground No. iii): The third and last contention raised by the learned Counsel for the petitioner is that the detenu has not been furnished with a copy of the rowdy sheet which has been referred to both in Ext.P5 report of the Sponsoring

authority and in Ext.P6, the order of detention. On this aspect, it is further pointed out that while in the English versions of the report, the name of the police station is referred to as Kodakara in the detaining order and Kodungallur in the Sponsoring Authority's report, in the Malayalam translation of Ext.P6, the same is correctly described as Kodungallur police station. Ext.P1 produced by the petitioner also shows that the rowdy sheet was opened at the Kodungallur police station. That purely inconsequential typist's devil has not resulted in any prejudice or consequence and cannot deliver any advantage to the detenu.

10. Be that as it may, the grievance is that the copy of the rowdy sheet has not been furnished to the detenu. In fact, we note that except that a rowdy sheet has been opened, reliance is not placed on any entry in the rowdy sheet. Copy of Ext.P1 has been furnished also. In these circumstances, we are of the opinion that the omission/failure to furnish copy of the said history sheet does not, in any way, vitiate the order of detention. The challenge on the third ground raised cannot also hence succeed.

11. No other contentions are raised before us. We are satisfied, in these circumstances, that the impugned order of detention and the consequent detention does not warrant interference.

12. In the result, this writ petition is dismissed.