
(2006) 09 MAD CK 0289

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 202 of 2006

S. Navaneetham

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Citation : (2007) 1 LW(Cri) 135

Hon'ble Judges : P.K. Misra, J;G. Rajasuria, J

Bench : Division Bench

Advocate : N. Ananda Kumar, for the Appellant;

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard Mr. N. Ananda Kumar, learned Counsel appearing for the Petitioner and Mr. S.P. Samuel Raj, learned Additional Public Prosecutor for the Respondents.

2. The order of the preventive detention of the detenu on the ground that he is a Goonda under Tamil Nadu Act 14 of 1982 is challenged by the mother of the detenu.

3. Though several contentions have been raised in this petition, it is not necessary to deal with all those contentions, as, in my opinion, the unexplained delay in disposal of the representation vitiates the order of preventive detention. From the materials available on record, including the chart furnished by the learned Additional Public Prosecutor, it is apparent that after the order of detention, dated 03.05.2006 was served, the Petitioner had filed a representation dated 10.06.2006, which was admittedly received on 12.06.2006 and thereafter remarks were called for on 13.06.2006. However, again a reminder was issued on 23.06.2006 and the remarks were received only on 26.06.2006 and thereafter such representation was considered and rejected by the Minister on 27.06.2006 and the rejection letter was sent to the detenu on 29.06.2006 which was served on the detenu on 01.07.2006.

4. From the aforesaid materials, it is apparent that there has been considerable delay between the date of receipt of the representation and the date on which the remarks were furnished by the detaining authority and the records indicate that a reminder was issued on 23.06.2006, which prima facie indicates that even the authorities were conscious that the remarks had not been furnished within a reasonable time. In this context, learned Counsel for the Petitioner has placed reliance on the decision of the Supreme Court reported in *Rajammal Vs. State of Tamil Nadu and Another*,), wherein it was observed:

8. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in *K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others*, . The following observations of the Bench can profitably be extracted here (Para 12 of AIR):

It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well, be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

5. In view of the aforesaid principle of law enunciated by the Supreme Court, it was for the Respondents to explain as to why there was unnecessary and undue

delay between the period from 13.06.2006 to 26.06.2006. Learned Counsel for the Respondents contended that 17th, 18th, 24th and 25th of June, 2006, being Saturdays and Sundays, were holidays and therefore it cannot be said that there was any unnecessary delay. Even excluding these four days, there appears to be long gap of nine days. Since liberty of a person was involved, it was the bounden duty of the authorities concerned to consider and dispose of the representation without any unnecessary delay. As observed by the Supreme Court, the question of number of days delay is not material. The question is as to whether the concerned authorities have acted in due promptitude while considering the representation of a detenu, since his liberty was in question. Learned Counsel for the Respondents submitted that the Petitioner had not raised any specific contention in the habeas corpus petition regarding any unnecessary delay in disposal of the representation and therefore the explanation has not been furnished. On going through the petition, we find that in Ground No. 8 the Petitioner has raised the question that the representation dated 10.06.2006 had been filed but it had not been disposed of. Even otherwise, since it is the Constitutional obligation on the part of the detaining authority to justify the order of detention, absence of any specific plea on this aspect may not be material. It is quite well known that even a simple letter from a detenu or a friend of detenu is also considered as a habeas corpus petition and when such petitions are entertained and numbered and notice is served on the detaining authorities, it is for the detaining authority to justify the order of detention by placing before the Court all relevant facts and circumstances.

6. For the aforesaid reasons, we are convinced that the order of detention has become vitiated on account of the unexplained delay in disposal of the representation. The habeas corpus petition, is accordingly, allowed and the order of detention passed by the second Respondent in CrI.M.P. No. 46/2006, dated 31.05.2006, is quashed. The detenu is directed to be released forthwith unless his custody is required in connection with any other case.