
(2007) 11 MAD CK 0041
In the Madras High Court
Case No : H.C.P. No. 1213 of 2007

S. Sampath Raj	Vs	APPELLANT
The State of Tamilnadu		RESPONDENT

Date of Decision : 19-11-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Penal Code, 1860 (IPC) — Section 307, 379, 392, 399, 402
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2007) 11 MAD CK 0041

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : N. Manokaran, for the Appellant; N.R. Elango, Assistant Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The second respondent herein clamped an order of detention as against the detenu i.e. ½ Santhilal, friend of the

petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained u/s 3(1) of the

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand

Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 10.7.2007 came to be passed by the second respondent on the basis of the ground case in Crime No. 458 of

2007 for the offence punishable u/s 307 IPC. On 6.6.2007 at about 7 hours, when one Savitha, Women Sub Inspector of Police, Krishnagiri

Taluk Police along with police party was engaged in vehicle checkup in Krishnagiri
on ½ Hosur National Highway, one ambassador car bearing

Reg. No. TN-07-Y-5767, which was coming from Hosur, did not stop even though
the police tried to stop. The police attempted to catch the car,

it hit and stopped in a nearby trench and the persons travelling the car jumped
out and attempted to escape. When the police party tried to

surround them, one person showed the knife and threatened them, however, the
police party surrounded them, the car was searched. Two knives,

two number plates, 200 gms. of chilly powder and a rope measuring 5 Mtrs. were
seized. The case as referred to above was registered.

2.2. Apart from the above, the detaining authority also took note of nine adverse
cases pending against the detenu, viz., Crime Nos. 115 and 176

of 2005 pending on the file of Hudco Police Station for the offence punishable u/s
379 IPC; Crime Nos. 596 of 2005, 981 of 2006 and 441 of

2007 on the file of Krishnagiri Taluk Police Station for the offence punishable
under Sections 399, 402 and 379 IPC; Crime Nos. 193 and 239 of

2005 on the file of Sipcot Police Station for the offence punishable under Sections
379 and 392 IPC; Crime No. 184 of 2007 on the file of

Thoppur Police Station for the offence punishable u/s 379 of IPC; and Crime No.
392 of 2007 on the file of Athiyamankottai Police Station for the

offence punishable u/s 379 IPC.

2.3. The detaining authority, having satisfied that the detenu is indulging in
activities which are prejudicial to maintenance of public order, passed the
impugned order.

3. Challenging the said detention, the friend of the detenu has come forward with
the present Habeas Corpus Petition seeking a writ of habeas

corpus to direct the respondents to produce the records pertaining to the
detention of the detenu, by order of detention passed by the second

respondent in S.C. No. 17 of 2007, dated 10.7.2007, to set aside the same and
to direct the second respondent to cause production of body and

person of the detenu before this Court and to set him at liberty.

4. Heard Mr.N.Manokaran, learned Counsel for the petitioner and Mr. N.R. Elango,
learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned Counsel for the petitioner is that
there is considerable delay in considering the representation and

the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a

representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M.

Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government.

Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and

Others, .

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara

Chand Vs. State of Rajasthan and Others, and Raghavendra Singh Vs. Superintendent, District Jail, Kanpur and Others, .

6.5. 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. 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 of 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. Even the reason that

the Minister was on tour and hence there was a delay of five days in disposing of

the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal Vs. State of Tamil Nadu and Another*, .

7. In the instant case, the impugned order of detention came to be passed on 10.7.2007. A telex representation was made to the Government on 29.6.2007 and the same was received by it 23.7.2007. Remarks were called for from the detaining authority on 24.7.2007 and the said representation was received on 26.7.2007 by the detaining authority. The detaining authority called for parawar remarks from the Sponsoring Authority on 28.7.2007, but remarks of the Sponsoring Authority were received only on 8.8.2007, viz., after a delay of 7 days, excluding 4 days public holidays. The delay in considering the representation, as indicated above, was highlighted by the learned Counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v. District Magistrate, Ahmedabad* :

1996CriLJ1981 is apposite:

In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the "liberty and freedom" to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest.

9. That apart, it is a settled law 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, vide K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, .

The delay on seven days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 10.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.