

(1987) 11 MAD CK 0033
In the Madras High Court
Case No : Writ Petition 5909 of 1987

Sekar alias Prabhudoss alias Prakash

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 24-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1988) LW(Cri) 131

Hon'ble Judges : S.A. Kader, J; Bellie, J

Bench : Division Bench

Advocate : M. Karpagavinayakam, for the Appellant;

Judgement

S.A. Kader, J.—This writ petition is filed under Article 226 of the Constitution of India, seeking the issuance of a writ of Habeas Corpus to quash the order of detention dated 16th March, 1987 against the petitioner and for setting him at liberty.

2. The impugned order of detention has been passed by the second respondent-- District Magistrate and Collector of Chingleput Dt., at Kancheepuram, in exercise of the powers conferred on him by and under S. 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act (Act 14 of 1982) with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of the public order.

3. The full facts of the case leading to the passing of this impugned order of detention have been set out in detail in the grounds furnished to the petitioner-- detenu and it is, therefore, needless to recapitulate the same in this order.

4. Several grounds of attacks have been levelled against the impugned order of detention, but, Mr. Karpaga Vinayagam learned counsel for the petitioner detenu

has confined his arguments to the inordinate and unexplained delay in passing the order on the representation made by the detenu.

5. The order of detention was made on 16th March, 1987. It was approved by the Government on 26th March, 1987. The meeting of the Advisory Board was held on 13th April, 1987, and the order of detention was confirmed on 15th May, 1987. The representation of the detenu was made on 10th April, 1987 and was received by the Government on 13th April, 1987. The remarks were called for on 15th April, 1987, and the remarks were received on 29th April, 1987. It was dismissed by the Government on 7th May, 1987 and the order was despatched on 13th May, 1987. There has thus been a delay of one month in dealing with the representation made by the detenu and it is urged by the learned counsel for the detenu that this delay is extraordinary and unexplained and the continued detention of the petitioner is void in law.

6. In paragraph 3 of the counter affidavit filed on behalf of the State of Tamil Nadu, the delay is sought to be explained as follows:

With regard to contentions in ground (A) of paragraph 3 of the affidavit-it is submitted that a representation dated nil was received by Government on 13th April, 1987, from Thiru Swamidoss, Manoharan, advocates for the detenu petitioner. The parawar remarks of the Collector and District Magistrate of Chingleput were called for in Government letter dated 15th April, 1987. The Collector and District Magistrate of Chingleput Dt, sent his parawar remarks in his letter dated 28th April, 1987 which was received by Government on 29th April, 1987. The representation of the advocate for the petitioner and the parawar remarks of the Collector and District Magistrate of Chingleput District were examined and the connected file was submitted by the section on 30th April, 1987. The Under Secretary to Government, Deputy Secretary to Government passed the file on 4th May, 1987. The Secretary passed the tile on 5th May, 1987. The Minister (Education and Law) passed the file on 6th May, 1987 and the Minister (Tourism, Prohibition and Electricity) passed orders rejecting the representation on 7th May, 1987. The rejection order was issued in Government letter dt. 7th May, 1987 and the same was despatched to the advocate for the petitioner on 12th May, 1987. As could be seen from the above, the representations were under active and continuous consideration of the Government and there is no avoidable delay in considering the representation. Hence, it is submitted that the contention raised in these paragraphs are not tenable or sustainable.

7. We shall now refer to several decisions cited by learned counsel for the petitioner. In Harish Pahwa Vs. State of U. P. and Others, , the order of detention was dated 16th May, 1980 and the representation made by the detenu from Varanasi Jail was dated 3rd June, 1980. The representation was received by the State Government on 4th June, 1980 but for two days no action was taken in connection with it. On the 7th June, 1980 comments were called for from the Customs authorities with regard to the allegations made in the representation

and such comments were received by the State Government on 13th June, 1980. On 17th June, 1980 the State Government referred the representation to its Law Department for its opinion which was furnished on 19th June, 1980. The rejection of the representation was ordered on 24th June, 1980, and it was communicated to the Jail authorities two days later. The learned Judges of the Supreme Court observed thus:

In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs, in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the law Department nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of secretary after secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case, we have no option but to declare the detention unconstitutional.

8. In *Raj Kishore Prasad Vs. State of Bihar and Others*, , the question of delay in considering the representation made by the detenu again came up before the Supreme Court. The representation in that case was made on 19th October, 1981 and it was rejected on 16th November, 1981. There was thus a delay of 28 days in considering the representation. It was admitted that the representation was, received in the office of the first respondent, the State of Bihar, on 20th October, 1981 and on the same day, a copy of that representation was sent to the District Magistrate, Gopalganj, the detaining authority. The District Magistrate returned the representation with his comments on 31st October, and it was received by the Department of Home on 4th November, 1981. On 5th November, 1981 it was examined by the Deputy Secretary (Home). On 6th November, 1981 it was received by the Special Secretary (Home) who endorsed it to the Chief Minister on 10th November, 1981, The District Magistrate took more than nine days in examining the representation and in forwarding his comments and for this there

is no explanation. The Supreme Court held--

Barring giving out the dates there is not the slightest explanation for the delay by District Magistrate as also the State Government. Even the trotting from the Deputy Secretary to the Special Secretary and then the Chief Minister has taken unusually long time. On the whole we consider in the circumstances of this case delay of 28 days in disposing of the representation as inordinate delay which would vitiate the order. Therefore, on this short ground we quash and set aside the detention order.

9. In *Kamla v. State of Maharashtra* AIR 1984 S.C. 814, the detenu made a representation to the Government on 18.11.1980 and the Government disposed of it as late as 15.12. 1980. The learned Judge of the Supreme Court observed thus--

In the instant case not only were the documents and the materials not supplied along with the order of detention, but there has been a delay of about 25 days in disposing of the representation of the detenu and no explanation for the same has been given. There are matters which must be closely examined by the Government. For the reasons given above, we hold that the continued detention of the detenu is void.

10. In *Mary v. State, rep. by Commissioner and Secretary, Prohibition and Excise Dept., Madras* 1986 L.W. CrL. 71, consisting of S. Natarajan, J. as he was then and Singaravelu, J. had to deal with a case of delay in considering the representation made by the detenu. The petitioner sent the representation to the Government on behalf of the detenu on 26th April, 1985 and that was received by the first respondent on 29.4.1985. On 30.4.1985 the representation was sent to the second respondent-District Collector at Kancheepuram for his parawar remarks. This communication is claimed to have been received by the second respondent only on 14.5.1985. The second respondent called for the parawar remarks from the concerned police and they were made available on 18.5.1985. Then the second respondent sent his parawar remarks on 24.5.1985 and they were received by the first respondent-State of Tamil Nadu on 27.5.1985. Thereafter, the papers passed through the hands of the Under Secretary Deputy Secretary, Law Minister and finally the Chief Minister and on 25.6.1985 the Chief Minister passed the order rejecting the representation. Characterising the delay as long and unexplained, the Bench pointed out that on account of an order of detention passed against the detenu, every day spent in prison is a day of deprivation of his liberty and therefore it is that the courts have laid down that every day's delay must be satisfactorily explained. On that short ground the learned Judge allowed the writ even though the materials against the detenu fully justified his being placed under detention.

11. In the light of these decisions let us now examine the delay in the instant case. The petitioner-detenu has sent his representation on 10.4.1987 and it has admittedly been received by the first respondent-State of Tamil Nadu on

13.4.1987. Immediately remarks have been called for from the second respondent--Collector and the District Magistrate and those remarks have been received only on 29.4.1987. The file has been passed from table to table in the Secretariat and the final order rejecting the representation has been passed by the Honourable Minister for Tourism, Prohibition, and electricity on 7.5.1987. Even assuming that there was no delay in the Secretariat of the Government of Tamil Nadu, there is hardly any explanation for the delay of 14 days with the Collector and the District Magistrate. The casual manner in which the Collector and the District Magistrate has dealt with this representation to quote the language of the Supreme Court in Harish Pahwa Vs. State of U. P. and Others, , "reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial". This inordinate and unexplained delay renders the continued detention of the petitioner void. On this ground we allow the writ petition set aside the order of detention passed against him and direct him to be set at liberty forthwith.