

(1999) 05 SC CK 0062

Supreme Court of India

Case No: Writ Petition (Criminal) No. 194 of 1998

P. Paulsamy

APPELLANT

Vs

Union of India and
Another

RESPONDENT

Date of Decision: May 14, 1999

Acts Referred:

- Constitution of India, 1950 - Article 32
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Section 3(1)

Citation: (1999) 2 ACR 1511 : AIR 1999 SC 2004 : (1999) AIRSCW 1707 : (1999) CriLJ 2897 : (1999) 3 Crimes 50 : (1999) 4 JT 16 : (1999) 123 PLR 503 : (1999) 3 SCALE 618 : (1999) 4 SCC 415 : (1999) 3 SCR 736 : (1999) 5 Supreme 332 : (1999) 2 UJ 995

Hon'ble Judges: S.N. Phukan, J; G. T. Nanavati, J

Bench: Division Bench

Advocate: R.K. Jain, K. Subramaniam, Mahesh Agrawal, E.C. Agrawala, Atul Sharma, Rishi Agrawal and Triveni Potekar, for the Appellant; P.P. Malhotra, Rajeev Sharma, B.K. Prasad and Y.P. Mahajan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.N. Phukan, J.

This writ petition has been filed by the detenu under Article 32 of the Constitution of India. The Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue who was empowered u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short the Act), being satisfied from the records that it is necessary to prevent the detenu from engaging in illicit trafficking in narcotic drugs in future, passed the order of detention on 28th September, 1998. On the same day grounds of detention were

issued and the detenu was informed that he could make a representation against the order of his detention, to the Detaining Authority and/or the Central Government addressed to the Detaining Authority or to the Secretary to the Government, of India, Ministry of Finance, Department of Revenue. On 26.10.1998 the detenu sent a representation addressed to (1) the Advisory Board. (2) the Secretary to the Government of India, Ministry of Finance and (3) the Detaining Authority.

2. In the counter affidavit dated 11.05.99 filed on behalf of the Union of India i.e. respondent No. 1 it has been stated that the said representation was received in the office on 28.10.1998 and comments from the Sponsoring Authority were called for by letter dated 29.10.98 and the same were received on 10.11.98. The representation along with comments was submitted to the Secretary of the Ministry of Finance on 11.11.98 which was rejected on 12.11.98 after due consideration and detenu was informed by letter dated 13.11.98 which was received by the detenu on 18.11.98. In the counter affidavit the order dated 7th July, 1995 issued by the Minister of Finance has been annexed and we find that power of revocation of detention orders u/s 12 of the Act has been delegated to the Secretary or Additional Secretary or Joint Secretary (Narcotics/in the Ministry of Finance (Department of Revenue), Government of India.

3. It has been urged by Mr. R.K. Jain, learned Senior counsel for the petitioner that there was unreasonable delay on the part of the Government in considering the representation of the detenu and, therefore, his continued detention is illegal.

4. Mr. P.K. Malhotra, learned senior counsel for the respondents justified the delay on the basis of the counter affidavit filed by the Union of India.

5. Mr. Jain has placed reliance on a decision of this Court (rendered by one of us Nanavati, J.) in 286842 . This Court held that though the delay was not long, it had remained unexplained and further though the delay by itself was not fatal, the delay which remains unexplained would be unreasonable. It was further observed that in spite of this well settled legal position, the State Government failed to explain satisfactorily that it had not dealt with the representation of the detenu as promptly as possible. The Court found in that case that representation was dealt with in routine manner and in view of indifference on the part of the Government the continued detention of the detenu was held to be illegal.

6. Examining the present case in hand, in the light of the ratio laid down above, we find that though the representation was received on 28.10.1998, comments of Sponsoring Authority were called for on 29.10.1998 which were received on 10.11.1998. From the records we find that the order for calling for comments of the Sponsoring Authority was not passed by any of the Officers empowered by the above orders of Minister dated 7th July, 1995. Therefore, we hold that the representation was dealt with in a routine manner and there was no application of

mind by the competent officer as to whether it was necessary to call for comments of the Sponsoring Authority. In other words, this delay from 28.10.98 to 10.11.98 being uncalled for has to be regarded as unreasonable and, therefore, fatal in view of the ratio laid down by this Court in Venmathi Selvam (Mrs.)(supra). We, therefore, make the rule absolute, quash and set aside the impugned order of detention and direct that detenu be released forthwith unless he is required to be kept in jail in connection with some other case.