

(2009) 07 MAD CK 0288

Madras High Court (Madurai Bench)

Case No: H.C.P. (MD) No. 92 of 2009

Ganesan

APPELLANT

Vs

State and The Secretary,
Government of Tamil Nadu

RESPONDENT

Date of Decision: July 29, 2009

Acts Referred:

- Constitution of India, 1950 - Article 22(5)
- Penal Code, 1860 (IPC) - Section 294, 307, 323, 341, 353
- Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 - Section 3, 4

Hon'ble Judges: R. Mala, J; R. Banumathi, J

Bench: Division Bench

Advocate: V. Kathirvelu, for the Appellant; P.N. Pandithurai, Assistant Public Prosecutor,
for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Mala, J.

In this Habeas Corpus Petition, the Petitioner - brother of the Detenu challenges the order of detention passed by the 1st Respondent, whereby the the Detenu was detained, branding him as a "Goonda", under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short "Tamil Nadu Act 14/1982).

2. The Detenu had earlier come to adverse notice in two cases, as detailed below.

Sl. No. Police Station and Crime No. Provisions of Law

1	Veerakeralampudur Police Station Crime No. 68/2007	u/s 294(b), 323 and 506(i) IPC
2	Alangulam Police Station Crime No. 801/2008	u/s 341, 294(b), 353, 506(ii) IPC and 3, 4 of Tamil Nadu Public Property Preventive of Damage and Loss Act.

The ground case in Crime No. 01/2009 under Sections 341, 294(b) and 307 IPC on the file of Pappakudi Police Station relates to the occurrence on 05.01.2009. On 5.1.2009 at 15.00 hours, the detenu along with his associates is alleged to have threatened and attacked with aruval when one Alagudurai came with his friend Nagamuthu near Nanthanthattai diversion demanding coolie for having repaired bike and thereby, the act of the detenu created a feeling of insecurity in the minds of the public standing there. On being satisfied that the Detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a "Goonda", the 1st Respondent passed the impugned order of detention.

3. Even though several contentions were raised and argued as well, the learned Counsel for the Petitioner confined his arguments only on the question of delay in consideration and disposal of the representation. Learned Counsel for the petitioner submitted that unexplained delay in consideration and disposal of the representation would vitiate the Detention Order.

4. We have heard the learned Additional Public Prosecutor. Learned Additional Public Prosecutor submitted that there were a number of public holidays and the authorities have explained the delay and as such there is no unexplained delay vitiating the detention order.

5. Article 22(5) of the Constitution of India casts an imperative duty upon the authorities to communicate the grounds of detention and also afford reasonable opportunity to the detenu so as to afford him the right of making representation. Such right of making representation is inclusive of the right of consideration and disposal of the representation within a reasonable time. Any unexplained or inordinate delay in the consideration of the representation has the effect of vitiating the Detention Order.

6. In [The District Collector Vs. Smt. Shaik Hasmath Beebi](#), the Supreme Court has held as follows:

Article 22(5) gives the detenu the right to make a representation against an order of detention and such right must be afforded as expeditiously as possible. In other words, the detenu must be afforded the earliest opportunity of making a representation against the order of detention. Article 22(5) in itself does not say to

whom a representation could be made or who will consider the representation, but because of the language of Article 22(5) and because of the fact that an order of detention affects the liberty of a citizen, without laying down any hard and fast rule as to the measure of time taken by the appropriate authority for considering a representation, it should be considered and disposed of by the Government as soon as it is received.

7. In [Rajammal Vs. State of Tamil Nadu and Another](#) , the Apex Court has held that the representation was received by the Secretary to the Government on 05.02.1998, the Government which received the remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. Thereafter, the files were submitted to the Minister, who received it on tour. Finding that there was no valid explanation for the delay from 09.02.1998 to 14.02.1998, the Apex Court held that the delay has vitiated the detention.

8. In the instant case, the chart furnished by the learned Additional Public Prosecutor discloses that though the Minister for PWD and Law had dealt with the File on 24.02.2009, the rejection letter came to be prepared only on 04.03.2009, after a delay of eight days. Learned Additional Public Prosecutor submitted that there were two public holidays in between 24.02.2009 and 04.03.2009 and as such, there was only six days delay. In our considered view, the delay of six days remain unexplained in consideration and disposal of the representation which would have the effect of vitiating the detention order.

9. Contending that even a delay of six days in disposal of representation would have the effect of vitiating order of detention, learned Counsel for the petitioner has drawn our attention to the decision of this Court in 2007 (2) MWN (Cr.) 145 - Sumaya v. The Secretary to Govt., wherein the Division Bench has observed as under in paragraphs 5.3 and 5.4 as under:

5.3. 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 [Sri Ram Skukrya Mhatre Vs. R.D. Tyagi and Others](#) .

5.4. 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](#) .

We are in respectful agreement with the view taken by the Division Bench.

10. Law is well settled that since personal liberty of a person is involved in the preventive detention, the authorities concerned are required to deal with the representation with utmost dispatch and promptitude, without any unnecessary delay. Right to expeditious disposal of the representation by the State Government

includes the right to communication of the result of the representation. Further, preparation of rejection letter is only a ministerial work, which does not require any judicious consideration. The unexplained delay in the consideration and disposal of the representation would have the effect of vitiating the detention order and accordingly the detention order is liable to be quashed.

11. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention in M.H.S. Confl. No. 05/2009, dated 12.01.2009, passed by the 1st respondent, is quashed. The Detenu Kannan alias Suresh Kannan is directed to be released forthwith, unless his presence is required in connection with any other case.