

In the High Court of Judicature at Madras

Dated: 30/06/2003

Coram

The Honourable Mr. Justice R. Jayasimha Babu
and
The Honourable Mr. Justice S. R. Singaravelu

Habeas Corpus Petition No. 2252 of 2002

Ameed @ Saleem Petitioner

-Vs-

1. The Commissioner of Police,
Greater Chennai.

2. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai 9. Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of habeas corpus to call for the records of the first respondent in BDFGIS No. 987/2002 dated 09.10.2002, to set aside the order of detention passed therein and direct the respondents to produce the petitioner Ameed @ Saleem, S/o Muthaliff, before this Court, now confined in Central Prison, Chennai and set him at liberty.

!For Petitioner : Mr. R. Ravichandran

^For Respondents : Mr. A. Navaneethakrishnan,
Additional Public Prosecutor

:ORDER

(Order of the Court was made by
R. Jayasimha Babu, J.)

The detaining authority made the order of detention on 09.10.2002 which was executed on 10.10.2002. The detenu was in custody on the date the detention order was made. On 11.10.2002 a representation was made by the detenu. It was sent in a cover by the Superintendent of the Central Prison, Chennai to the Commissioner of Police, Chennai, who had made the detention order. The cover has been placed before us. We find thereon the seal of the Superintendent of the Central Prison, Chennai, and the number given to the document by the jail authority is also set out on that cover.

2. The detenu's representation was sent to the Commissioner with the

covering letter signed by the Superintendent of Central Prison, Chennai. That covering letter is addressed to the Commissioner of Police. The name of the detenu, his number as also the number of the detention order are mentioned in the covering letter. The body of the letter states that the representation received from the detenu is being sent for favour of disposal.

3. That letter, according to the affidavit of the first respondent filed before us, was delivered at the control room of the Commissioner of Police on 11.10.2002 at 20.10 hours. The Control room sent it to the tapal section on 16.10.2002 as 12th and 13th of October, 2002 were Government holidays being Saturday and Sunday and 14th and 15th of October were holidays due to Ayudha pooja and Vijaya Dashami. The tapal Superintendent is stated to have in-turn handed over the same to the concerned section on 17.10.2002 and that section is said to have put up the representation to the Commissioner on 18.10.2002. 18.10.2002 is stated to have been the third day of a cricket test match between India and West Indies, that India was batting on that day, and therefore a heavy crowd was expected at the cricket stadium. The Commissioner has stated that he was physically present there for bandobast at the stadium and could not attend the tapal put up to him on 18.10.2002. 19.10.2002 and 20.10.2002 were Government holidays being Saturday and Sunday. The Commissioner has stated that he attended the office on Sunday the 20th of October, on which day he went through the representation and after going through the same rejected it. The reason given for rejecting the representation is, "Since the detention order was already approved by the Government we are not in a position to consider the contents of the application."

4. The result is that a right given to the detenu to make a representation to the detaining authority was rendered wholly futile by reason of the detaining authority not having bestowed his attention to that representation despite the fact that the representation had been made as expeditiously as possible, i.e. on the very next day of the execution of the detention order. Although it was open to the detaining authority to consider that representation and if so inclined after such consideration to revoke the detention at any time prior to the 20th of October, the day on which the government approved the detention order, the detaining authority had not even seen that representation till that time and by the time he saw that representation he had lost the power to revoke the order.

5. The Supreme Court in the case of State of Maharashtra vs. Santosh Shankar Acharya, AIR 2000 SC 2504, while dealing with the Maharashtra Act, which is similar to the Tamil Nadu Act 14 of 1982, has held that the detaining authority "notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making the representation to the State Government under Section 8(I), the said detaining authority continues to be the detaining authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of the detention order. Consequently, until the said detention order is approved by the State Government the detaining authority can entertain the representation from a

detenu and in exercise of his power under Section 21 of the Bombay General Clauses Act, could amend, vary or rescind the order, as is provided under Section 14 of the Maharashtra Act. This being the position, the non communication of that fact to the detenu that he could make a representation to the detaining authority so long as the order has not been approved by the State Government in a case where an order is issued by an officer other than the State Government under section 3(2) of the Maharashtra Act which is an infraction of the valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamalesh Kumar's case (1995) 4 SCC 51 would apply notwithstanding the fact that in Kamalesh Kumar's case the Court was dealing with an order of detention issued under the provisions of COFEPOSA." This Court has held recently, following that decision of the apex Court that the ratio of that case applies with equal force to the construction of the Tamil Nadu Act 14 of 1982 as well.

6. The right of the detenu to have his representation considered expeditiously cannot be rendered wholly ineffective on the plea that the detaining authority was too busy to look at the representation or that the procedures in the detaining authority's office were such as to result in the representation reaching the table of the detaining authority several days after it's receipt in the office of the detaining authority. Such reason cannot be regarded as a valid excuse for not looking at the representation that had been made on the very next day of the date of execution of the order of detention, especially when the detaining authority to whom the representation had been made in accordance with the directions contained in the order of detention had available with him only a maximum period of 12 days - a period which could be further reduced depending upon the speed with which the State Government acts in confirming the detention order - during which he could exercise the power of revocation.

7. This case is a stark example of what should not be. The detenu was in custody at the time the detention order was executed. He wrote out a representation in jail. It was not possible for him to put it in an envelope and carry it to the post office/postbox outside the jail for being put in the course of transmission to the Commissioner. He had necessarily to hand it over to the Superintendent of Jail, which was done. The Superintendent of the Jail was aware of the contents of the document as also the purpose for which it was being given. The Superintendent attached a covering letter to that document which clearly sets out the essential details, namely, the name of the detenu, his number and the date of the order of detention and also of the authority who had made the detention order. Those documents were put in an envelope which was addressed not by the detenu, but by an official of the jail, who chose to address the letter to the Commissioner of Police, the detaining authority, by designation.

8. The cover thereafter, was delivered by the jail authorities to the control room of the office of the Police Commissioner, which is situated at a relatably short distance from the Central jail in Chennai at 08.10 p.m. on

11.10.2002. It was, admittedly, a working day. The staff at the control room, instead of sending it immediately to the Commissioner, the detaining authority, chose to send it to the tapal section after four days on the ground that the intervening days were holidays. The official who opened the tapal did not send it to the Commissioner even after being aware of the nature of the document. Only on the following day the tapal section forwarded it for the perusal of the Commissioner of Police. The document so sent from the tapal section to the Personal Section of the Commissioner was received in his section only on 17th. That was a working day. It was not, according to the Commissioner, put up to him on that day, but was put up on the following day, which again was admittedly a working day. On that day, the Commissioner was away from his office to supervise the bandobast arrangements for a cricket match. The following day i.e., 19th was a Saturday, a holiday and on 20th, though a holiday being Sunday, he attended office, and on that day he no longer possessed the power to revoke the order, as on that very day, the State Government had approved the order of detention.

9. The reason given in the affidavit of the first respondent for this delay is that cover sent by the Superintendent of the Jail was not addressed to the detaining authority by name, but had been addressed to him only by designation, and the fact that there were some public holidays between the 11th and 20th.

10. In the circumstances of this case, the justification offered for non consideration of the representation prior to the 20th,, cannot be accepted. The detenu cannot be blamed for the mistake committed by the Superintendent of Jail, who chose to address the cover to the Commissioner by designation and not by name, even though the Superintendent was the person who had served the order of detention on the detenu had explained its contents to him and was aware of the direction in the detention order that the representation should be addressed to the detaining authority by name. The Superintendent of the Jail, after he arranged for the delivery of that cover to the Commissioner, went out of the picture, and it was the control room of the Commissioner which acquired custody of that representation at 08.10 in the evening of 11.10.2002. The control room should have opened the cover and if it did not have the authority to open the cover, realising that the communication had come from jail and could pertain to a representation by a detenu, should have immediately sent it to the Commissioner or to the tapal section for being attended to. That however, was not done. The tapal section contributed further to this delay by not sending it to the Commissioner on the day it received, on 16 th, but sending it only on 17th and the section which received that communication further compounded the matters by not placing the matter on 17th, but choosing it to place it before the detaining authority only on 18th, on which day he happened to be busy outside the office.

11. While we can accept that the Commissioner could not attend the office on 18th, for the reasons given by him, we do not appreciate and we cannot condone the way in which the matter was dealt with from the time of addressing the cover, in which the representation was sent from Jail till the point of time at which it was put up to the Commissioner.

12. The facts which have been narrated and dealt with in some detail in this order would clearly show that the detaining authorities named in S.3(2) of the Act 14 of 1982, have not yet realised the obligation cast on them to act with utmost promptitude in considering the representations made by the detenus within 12 days from the date of the order of detention. The detenus cannot be asked to await the pleasure of persons working in different sections of the office of the District Magistrate or Commissioner of Police, nor can the way in which the office of the detaining authority works, be given as an excuse for justifying the delays in their offices. The intervening of holidays also cannot constitute the justification as in, cases where normal holidays of Saturdays and Sundays are to be followed by holidays on account of other reasons, special care should be taken to ensure that the representations are not allowed to lie over during the long holidays following the week-ends and that it receives the attention either immediately or is sent to the detaining authority who had acted under section 3(2), wherever he may be so that he could deal with and dispose of the same immediately.

13. The number of detention orders made by the detaining authorities under section 3(2) of the Act 14 of 1982 cannot be very large, and even if they are, that cannot be an excuse for not attending to the representations made by or on behalf of the detenus within the 12 days' period. The right accorded to the detenu under Article 22(5) of the Constitution will become meaningless if the representations are kept in cold storage till the 12 days' period is over or till the Government grants its approval after which, the detaining authority would have no further responsibility in the matter of consideration of such representations.

14. A duty is also imposed on the authorities in the jails to ensure that the representations given by those in custody are addressed properly to the detaining authority in the manner required in the detention order. Whenever a communication is sent to the detaining authority, on the envelope it should be clearly marked that it contains the representation from the detenu, so that whoever receives such an envelope, is immediately made aware of the nature of the document in it and is put on alert to send the document forthwith to the detaining authority. The officials dealing with the tapal should place such envelope containing the representation from detenus, before the detaining authority, ordinarily within a period of not more than 24 hours from the time at which the cover is delivered to the office of the detaining authority.

15. As the detenu's constitutional right under Article 22(5) of the Constitution has been infringed by reason of the non consideration of the representation by the detaining authority, though the representation itself had been made well in time and had been received in the office of the detaining authority on the very same day on which the representation was made, despite the State Government's approval of the detention order on the 20th, the detenu's continued detention can no longer be regarded as legal.

16. The habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith unless his detention is required in connection with any other case.

Index : Yes

Web : Yes

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Copies to

1. The Commissioner of Police,
Greater Chennai.
2. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai 9.
3. The Superintendent,
Central Prison, Chennai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

