

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM  
and  
The Hon'ble Mr. Justice S.K.KRISHNAN

H.C.P. No.1371 of 2004

T.S.Khadeeroon .... Petitioner

vs.

1. The State of Tamilnadu  
Rep. by the Secretary to the Government,  
Public (SC) Dept.,  
Fort St. George,  
Chennai.
2. The Union of India,  
Rep. by its Secretary  
to the Government,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.
3. The Superintendent of  
Central Prison,  
Central Prison, Chennai. .... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records relating to the impugned detention order in G.O.No.SR.1/1418-3/2004 dated 22.11.2004 passed by the first respondent herein and quash the same and direct the respondents to produce the body of the person of the detenu Tappa Shaik Shabbeer son of Late.Tappa Shaik Masthan Saheb, COFEPOSA detenu now detained in Central Prison, Chennai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.A. Ganesh

For R-1 & R-3 : Mr.A.Kandasamy  
Additional Public Prosecutor.

For R-2 : Mrs.Vanathi Srinivasan,  
Addl. Central Govt. Standing Counsel

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

One Khadeeroon, wife of the detenu by name Tappa Shaik Shabbeer, Challenges the detention order dated 22.11.2004 of the first respondent herein, passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

2. After taking us through the grounds of detention and all other connected materials, learned counsel for the petitioner has raised the following contentions:

I) The document, which was received by the detenu on 07.12.2004, is in English and it was sent to him without covering letter. According to the learned counsel, in the absence of covering letter, the detenu was unable to understand the purpose for which the said document was supplied to him. He also contended that the detenu, being conversant only with Telugu and not knowing English, in the absence of supply of translated copy of the said document, he was not only prejudiced but could not make effective representation, hence, the said course is violative of Article 22(5) of the Constitution of India.

II) Though the detenu was arrested on 09.11.2004, the arrest was intimated to his wife only on 19.11.2004 and the same is in violation of the principles laid down by the Supreme Court in D.K.Basu vs. State of West Bengal (1997 (1) SCC 416).

II(a). On the other hand, learned Additional Public Prosecutor, while submitting that there is no flaw in the grounds of detention, would contend that all the procedural aspects were strictly followed and complied with and that there is no ground for interference.

3. We have carefully considered the materials placed and the rival submissions made by the respective counsel.

4. Coming to the first contention, we have perused the letter of the Deputy Commissioner of Customs (R & I - Air), dated 06.12.2004. A perusal of the same shows that the said letter was sent by way of reply to the representation dated 22.11.2004 made by Mr.A.Ganesh, Advocate for the detenu. While replying to the said Advocate, a copy of the reply has also been marked to the detenu. It cannot be claimed that the Advocate, who sent the representation on behalf of the detenu, is not in a position to understand the contents of the said letter. Though the detenu may not aware of the contents of the same, as rightly pointed out by the learned Additional Public Prosecutor, when copy of the reply was sent to the Central Prison, Chennai, for service to the detenu, it is stated that the contents of the same were explained in the language known to the detenu and that only after understanding the matter, the detenu put his signature, acknowledging the same. In such circumstances, we are of the view that even in the absence of covering letter, since the reply dated 06.12.2004 specifically refers that the same is sent pursuant to the representation dated 22.11.2004 of the Advocate (Mr.A.Ganesh) on behalf of the detenu, the same cannot be faulted with and there is no error or infirmity. Likewise, as said earlier, since the contents of the same were explained to the detenu in the language known to him, it cannot be claimed that the detenu was confused or failed to understand the same. Accordingly, we reject the said contention.

5. Coming to the other contention, viz., improper intimation, it is not in dispute that the detenu was arrested on 09.11.2004. It is also not in dispute that as per the principles laid down by the Apex Court in *D.K.Basu's case* (cited supra), if the family members of the detenu reside elsewhere, the arrest should be intimated to them through the nearest police station/Legal Aid Organisation or by telegram within 8 to 12 Hours. According to the learned counsel for the petitioner, the arrest of the detenu was intimated to his wife only on 19.11.2004, which according to him, is not in accordance with the principles laid down in the above referred decision. In this regard, learned counsel, by drawing our attention to the English Translation of the statement given by T.S.Shabbir/the detenu on 09.11.2004, would submit that even though the detenu has specifically stated that his address is 22/311, Kotha Kottala Veedhi, Proddutur, Cuddappah District, Pin 516 360, it is not clear as to why the authorities concerned had sent the telegram to the address, viz., No.22/193 of the same street. It is also his claim that after finding that the correct address is No.22/311, Kotha Kottala Veedhi, Proddutur, Cuddappah District, Pin 516 360, finally, another telegram was sent, intimating his arrest, only on 19.11.2004.

6. If the above statement is correct, the contention of the learned counsel for the petitioner is to be accepted. In this regard, it is relevant to refer paragraph No.1(vii) of the grounds of detention, wherein, it has been specifically stated that a telegram was sent to his wife Tappa Shaik Khadeeroon, 22/193, Kottakottala Street, Proddatur, Cuddapah, Andhra Pradesh, on 09.11.2004. A reading of the said paragraph makes it clear that the telegram was sent to the address as given in the passport of the detenu. It cannot be claimed that the authority is not justified in sending the intimation to the address given in the passport. No doubt, in his statement on 09.11.2004, the detenu has mentioned that his residential address is No.22/311, Kotha Kottala Veedhi, Proddatur, Cuddappah District, Pin 516 360. After finding that the correct address is 22/311, the authorities have sent another telegram to the said address. In those circumstances, we are of the view that inasmuch as the authorities have sent the intimation to the address mentioned in the passport, their action cannot be blamed. Equally, after knowing that the wife of the detenu is not residing in the address as mentioned in the Passport and after finding that the proper address is 22/311, another intimation was also sent. All those details are available in the paper book supplied to the detenu. In such circumstances, it cannot be claimed that there is failure/violation on the part of the authorities in intimating the arrest of the detenu to the family members.

7. In the light of the factual details available, we are of the view that it is unnecessary to refer the decisions relied on by the learned counsel for the petitioner.

8. Yet another argument was advanced stating that the intimation to the detenu for appearance before the Advisory Board was not in the language known to him. Admittedly, pursuant to the intimation, the detenu appeared before the Advisory Board and he was enquired by the Advisory Board and no objection was raised before the Advisory Board and no objection was raised before the Advisory Board. In such circumstances, the said contention is liable to be rejected.

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9. In the light of what is stated above, we do not find any valid ground for interference. Accordingly, the Habeas Corpus Petition fails and the same is dismissed.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Secretary to the Government, Public (S.C.) Dept.,  
Fort St. George, Chennai 600 009.

2.The Secretary to the Government,  
Union of India,  
Ministry of Finance,  
Department of Revenue, New Delhi.

3. The Superintendent of Central Prison,  
Central Prison, Chennai.  
(In dupciate for communication to detenu)

4.The Secretary to Govt.,  
Govt. of Tamil Nadu,  
Public (law and order)  
Dept.,  
Fort St. George,  
Chennai-9

5.The Public Prosecutor,  
High Court,  
Madras

6.The Sub.Asst.Registrar,  
COFEPOSA SECTION,  
High Court,  
Madras.

+1cc to Mr.A.Ganesh,Advocate SR.No.19355

+1cc to Mrs. Vanathi Srinivasan,ACGSC SR.no.19667  
SMK(CO)  
kaa 28.04.

HCP. No.1371 of 2004.  
25.04.2005.