

A

MRS VENMATHI SELVAM

v.

STATE OF TAMIL NADU AND ANR.

JUNE 10, 1998

B

[G.T. NANAVATI AND S. SAGHIR AHMAD. JJ.]

C

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982-Preventive Detention --Representation made by the detenu-Delay by Government in considering it - Delay, though short, not explained—Unexplained delay is unreasonable— Continued detention due to indifference of the authorities, is illegal-Detention order set aside.

D

The Commissioner of Police passed an order detaining appellant's husband under the 1982 Act. The High Court rejected the appellant's petition. Hence this appeal.

Allowing the appeal, this Court

E

HELD : 1. The detenu had made a representation on 7.10.97. The State Government was required to explain how it dealt with the representation between 15.10.97 and 10.11.97. Except stating that it called for the remarks of the detaining authority on 17.10.97 the Government has failed to explain why it had become necessary for it to call for the remarks of the detaining authority. Even after an opportunity was given by the Court on 12.5.98 to the respondents to file a counter affidavit dealing with the contentions raised in the S.L.P. the Government has failed to file any counter and explain why it has called for the remarks of the detaining authority and what was the reason for not taking up for consideration the representation of the detenu from 21.10.97 till 10.11.97. Though the delay is not long it has remained unexplained. Though the delay by itself is not fatal the delay which remains unexplained becomes unreasonable. In spite of well-settled legal position the State Government has failed to explain satisfactorily that it had dealt with the representation of the detenu as promptly as possible. It appears that oblivious of the correct legal position and its obligations in matters of preventive detention it has dealt with the representation of the detenu in a routine manner. This indifference of the Government is the cause for rendering the continued detention of the detenu illegal.[527-F-H; 528-A-C]

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 629 A
of 1998.

From the Judgment and Order dated 18.2.98 of the Madras High Court
in H.C.P. No. 998 of 1997.

K.K. Mani for the Appellant. B

M.N. Krishnamani, T. Raja and V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

NANAVATI, J Leave granted. Heard learned counsel for the parties. C

The appellant is the wife of one Selvam who has been detained as a
Goonda under Tamil Nadu Prevention of Dangerous Activities of Bootleggers,
Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and
Slum Grabbers Act, 1982. The Commissioner of Police, Chennai City, on being
satisfied that Selvam was involved in activities prejudicial to the maintenance
of public order and with a view to preventing him from acting in the said
prejudicial manner it was necessary to detain him, passed an order of detention
on 23.8.97. D

The appellant challenged that order before the High Court of Judicature
at Madras but her petition failed. She has, therefore filed this appeal. E

What is contended by the learned counsel for the appellant is that there
was unreasonable delay on the part of the Government in considering the
detenu's representation and, therefore, his continued detention is illegal. The
detenu had made a representation on 7.10.97. The Governor's Secretariat
received it on 14.10.97. It was despatched to the Government on 15.10.97. It
called for remarks of the detaining authority on 17.10.97. The detaining authority
in his turn called for remarks of the sponsoring authority on 21.10.97. The
sponsoring authority gave its remarks on 24.10.97 and they were forwarded
by the Commissioner of Police to the Government on 28.10.97. The
representation was rejected by the Government on 10.11.97. The State
Government was required to explain how it dealt with the representation
between 15.10.97 and 10.11.97. Except stating that it called for the remarks of
the detaining authority on 17.10.97 the Government has failed to explain why
it had become necessary for it to call for the remarks of the detaining authority.
Even after an opportunity was given by this Court on 12.5.98 to the
respondents to file a counter affidavit dealing with the contentions raised in H

- A the S.L.P the Government has failed to file any counter and explain why it had called for the remarks of the detaining authority and what was the reason for not taking up for consideration the representation of the detenu from 21.10.97 till 10.11.97. Though the delay is not long it has remained unexplained. Though the delay by itself is not fatal the delay which remains unexplained becomes unreasonable. In spite of the this well-settled legal position the State
- B Government has failed to explain satisfactorily that it had dealt with the representation to the detenu as promptly as possible. It appears that oblivious of the correct legal position and its obligations in matters of preventive detention it has dealt with the representation of the detenu in a routine manner. This indifference of the Government is the cause for rendering the
- C continued detention of the detenu illegal. We, therefore, allow this appeal, quash and set aside the impugned order of detention and direct that the detenu be released forthwith unless his presence in jail is required in connection with some other case.

I.M.A.

Appeal allowed.