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S.M.F. SULTAN ABDUL KADER

v.

JT. SECY., TO GOVT. OF INDIA AND ORS.

MAY 28, 1998

B

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

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COFEPOSA Act—1974—S 3(1)—Detention-Explanation for the delay of 17 months from the date of the detention order to executing it not satisfactory and not borne out by the records. That the detenu was not traceable not substantiated-unreasonable delay robs the justification for detention—Constitution of India 1950—Article 32.

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An order detaining the appellant was made on 14-3-1996 though he was actually detained only on 7.8.97. The appellant challenged the detention on the grounds that there was a delay in making the detention order and executing it and that he was not given a copy of the written proposal of the sponsoring authority to the detaining authority. The respondent sought to explain the delay claiming that the detenu could not be traced.

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Allowing the appeal, this Court

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HELD : 1. The order of detention was passed by the detaining authority not in lawful exercise of the power vested in him. It has not been explained why no attempt was made from 14.3.96 to 25.4.97 to apprehend the detenu and put him under detention even though the detention order was passed on 14.3.96. It further appears that no attempt was made to see that the petitioner was immediately apprehended. No serious efforts were made by the police authorities to apprehend the detenu. Only once in a month the police tried to find the petitioner. It is also not stated where they looked for him and what inquiries were made to find out his whereabouts. The Joint Secretary himself had made no effort to find out from the police as to why they were not able to apprehend the petitioner. No material has been produced on the basis of which it can be said that the police authorities had made reasonable efforts to locate the petitioner and apprehend him and yet they were not successful in finding him out. [510-F, C-D]

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2. There is also no material to show that the detaining authority had made any serious attempt during this whole period of delay to find out if the

detention order was executed or not. Thus the delay in execution of the detention order remains unexplained. The unreasonable delay in executing the order creates a serious doubt regarding the genuineness of the satisfaction of the detaining authority as regards the immediate necessity of detaining the petitioner in order to prevent him from carrying on the prejudicial activity referred to in the grounds of detention. [510-E]

CRIMINAL APPELLATE JURISDICTION : Writ Petition (Crl.) No. 444 of 1997.

(Under Article 32 of the Constitution of India.)

K.K. Mani for the Petitioner.

C.S. Vaidyanathan, Additional Solicitor General and V.K. Verma and Y.P. Mahajan for the Respondents.

The Judgment of the Court was delivered by

NANAVATI, J. The petitioner has filed this petition under Article 32 of the Constitution challenging the order of detention passed against him under Section 3 (1) of the COFEPOSA Act 1974. The order is challenged on three grounds, namely, (1) there was delay in passing the detention order (2) there was delay in execution of the detention order and (3) a copy of the written proposal made by the sponsoring authority to the detaining authority was not supplied to the petitioner.

It is not necessary to state the facts leading to the passing of the detention order as we are inclined to allow this petition on the second ground raised by Mr, K.K. Mani, learned counsel for the petitioner. The order of detention was passed on 14.3.1996. The petitioner came to be detained on 7.8.1997. The contention raised by Mr. Mani is that there was undue delay in execution of the order and that clearly indicates that there was no genuine satisfaction on the part of the detaining authority regarding the necessity of immediate detention of the petitioner in order to prevent him from committing and continuing to commit the prejudicial activity alleged against him. In reply to this contention raised by the petitioner what the detaining authority has stated in the counter affidavit is that the detention order could not be executed immediately as the petitioner was absconding. In paragraph 12 of the counter affidavit filed by the Joint Secretary to the Government of India it is stated as under:

A “Continuous efforts were made by the State Police on the following dates to apprehend the detainee-

25.04.1996, 20.05.1996, 30.06.1996, 23.07.1996, 28.08.1996, 24.09.1996, 15.10.1996, 26.11.1996, 18.12.1996 & 20.12.1996, 17.1.97, 27.2.97, 26.3.97, 24.4.97, 29.5.97, 29.6.97, 25.7.97 and 7.8.97.

B But for the sustained efforts by the Police authorities at Nagore, he would not have been apprehended now.”

C The joint Secretary has not explained why no attempt was made from 14.3.96 to 25.4.96 to apprehend the detainee and put him under detention even though the detention order was passed on 14.3.96. It further appears that no attempt was made to see that the petitioner was immediately apprehended. No serious efforts were made by the Police authorities to apprehend the detainee. Only once in a month the Police had tried to find out the petitioner. It is also not stated where they looked for him and what inquiries were made to find out his whereabouts. The Joint Secretary himself had made no effort to find out D from the Police authority as to why they were not able to apprehend the petitioner. No material has been produced on the basis of which it can be said that the Police authorities had made reasonable efforts to locate the petitioner and apprehend him and yet they were not successful in finding him out. There is also no material to show that the detaining authority had made any serious E attempt during this whole period of delay to find out if the detention order remains unexplained. The unreasonable delay in executing the order was executed or not. Thus, the delay in execution of the detention order remains unexplained. The unreasonable delay in executing the order creates a serious doubt regarding the genuineness of the detaining authority as regards the immediate necessity of detaining the petitioner in order to prevent him from F carrying on the prejudicial activity referred to in the grounds of detention. We are of the opinion that the order of detention was passed by the detaining authority not in lawful exercise of the power vested in him. We, therefore, allow this petition, set aside and quash the order of detention and direct that the petitioner be set at liberty forthwith unless his presence is required in jail G in connection with any other case.

I.M.A.

Petition allowed.