

Geetha vs State of Kerala

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Court : Kerala

Decided On : May-31-2024

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mr. Justice S.Manu

Appeal No. : WP(Crl.)/487/2024

Appellant : Geetha

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR. JUSTICE S.MANU FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 PETITIONER/S: GEETHA AGED 47 YEARS S/O. BIJU, PALLIVILA HOUSE, ULLAS NAGAR-90, PUNTHALATHAZHAM CHERRY, VADAKKEVILA VILLAGE, KOLLAM., PIN - 691010 BY ADVS. C.RAJENDRAN B.K.GOPALAKRISHNAN R.S.SREEVIDYA MANU M. RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY THE ADDL. CHIEF SECRETARY (HOME), GOVERNMENT OF KERALA, SECRETARIAT,

THIRUVANANTHAPURAM, PIN - 695001 2 THE DISTRICT
MAGISTRATE CIVIL STATION, COLLECTORATE, KOLLAM, PIN -
691013 3 DISTRICT POLICE CHIEF OFFICE OF THE DISTRICT
POLICE CHIEF KOLLAM CITY, KOLLAM, PIN - 691001 4 THE CITY
POLICE COMMISSIONER KOLLAM CITY., PIN - 691001 5 STATION
HOUSE OFFICER ERAVIPURAM POLICE STATION, KOLLAM
DISTRICT, PIN - 691011 6 THE SUPERINTENDENT CENTRAL
PRISON, VIYUR, THRISSUR, PIN - 680010 BY ADVS. SRI.K.A.ANAS
(GP)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 31.05.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

CR Dated this the 31st day of May 2024

S.Manu, J.

This writ petition is filed seeking a writ of habeas corpus to produce Vineeth @ Poppy, who is suffering preventive detention under Section 3 of the Kerala Anti-Social Activities (Prevention) Act, 2007 in execution of Ext.P1 detention order issued by the 2 nd respondent on 27.01.2024.

2. The sponsoring authority submitted report to the 2 nd respondent considering the detenu as 'known Rowdy' citing three criminal cases that are pending for trial and another case in which investigation is ongoing.

. 3. The first case relied on by the 2 nd respondent is Crime No.132/2020 of Eravipuram Police Station registered on 29.01.2020 for the offences under Sections 450, 294(b), 427, 341, 326, 307, 323, 354, 506(ii) of IPC and Section 27 of the Arms Act. The second case relied on is Crime No.146/2022 of Kilikolloor Police Station registered on 14.02.2022 for the offences under Sections 143, 147, 148, 447, 323, 324 r/w 149 of IPC.

The third case is Crime No.

for the offences under Sections 341, 324, 308, 294(b) and Section 34 of the IPC. The 4 th case is Crime No. 1843/2023 of Eravipuram Police Station registered on 31.10.2023 for the offences under Sections 341, 506, 324 and 308 of IPC, in which investigation is ongoing.

4. We have elaborately heard the arguments advanced by Sri. C. Rajendran , learned Counsel appearing for the petitioner and also Sri.K.A.Anas, learned Government Pleader appearing for the respondents.

5. Several contentions have been raised in the writ petition. The contentions emphasised by the learned Counsel for the petitioner during the course of hearing are summarised as below:

1. The detenu submitted representation before the 1 st

respondent on 15.02.2024, but the same was not considered promptly by the 2nd respondent, thereby defeating the constitutional guarantee under Article 22 of the Constitution of India.

2. The representation was considered only after receipt of the report from the Advisory Board and the said course of action adopted has infringed the fundamental right of the detenu.

3. There was considerable delay not only in considering the representation, but also in communicating the decision taken on the representation to the detenu.

6. Learned Government Pleader produced the relevant files for perusal. The following dates are relevant for the purpose of deciding the prime contentions raised-

Date of reference to the Advisory Board- 06.02.2024 Date of submission of representation to the 1st respondent - 15.02.2024 Date of receipt of report to the Advisory Board - 19.03.2024. Date of decision on the representation- 08.04.2024 Date of passing of confirmation order-

11.4.2024 Date of communication of the decision on the representation -
17.04.2024.

7. In view of the chronology given above, it is clear that the

detenu submitted representation to the 1st respondent on 15.02.2024, after reference to the Advisory Board was made on 06.02.2024. The 1 st respondent Government did not act on the representation till report of

the Advisory Board was received on 19.03.2024. Though the report was received on 19.03.2024, decision on the representation was taken only on 08.04.2024 as seen from the relevant files produced by the learned Government Pleader. The Government decided to confirm the detention order subsequently and communicated the order to the detenu later, on 17.04.2024. Therefore, the detenu came to know about the fate of the representation only after a lapse of two months from the date of submission of the same.

8. We proceed further, keeping in mind the observations of the Honourable Supreme Court in *Pebam Ningol Mikoi Devi vs. State of Manipur* [2010 (9) SCC 618].

3. Individual liberty is a cherished right, one of the most valuable fundamental

rights guaranteed by the Constitution to the citizens of this country. On liberty, William Shakespeare, the great play writer, has observed that a man is master of his liberty. Benjamin Franklin goes even further and says that any society that would give up a little liberty to gain a little security will deserve neither and lose both. The importance of protecting liberty and freedom is explained by the famous lawyer Clarence Darrow as you can protect your liberties in this world only by protecting the other man's freedom; you can be free only if I am free. In India, the utmost importance is given to life and personal liberty of an individual, since we believe personal liberty is the paramount essential to human dignity and human happiness.

9. The learned Counsel for the petitioner vehemently

submitted that the Government ought to have considered the representation immediately on receipt of the same. In answer to the said contention, the learned Government Pleader relied on the

judgment of the Honourable Supreme Court in Golam Biswas v.

Union of India and another [2015 (16) SCC 177] and contended that the Government is bound to wait for the report of the Advisory Board when it receives a representation after reference was made to the Advisory Board.

10. The judgment of the Honourable Supreme Court in

Golam Biswas's case (supra) and other precedents were considered later by a Bench of three Honourable Judges of the Apex Court in Ankit Ashok Jalan vs. Union of India and others [2020 (16) SCC 127]. The said case arose from a preventive detention under the COFEPOSA Act, 1974. The majority view in the said judgment is to the effect that the detaining authority under the COFEPOSA Act, who also is competent to revoke the detention at any time as per the provisions of the said Act need not wait for the outcome of the proceedings before the Advisory Board and shall deal with representations received without delay. We note at this juncture that the designated detaining authority under KAAPA is not vested with the power to revoke the detention and such power is available under Section 13 of the KAAPA Act only to the Government. However the dictum laid down in Golam Biswas's case (supra) to the effect that the Government shall await report of the Advisory Board, should apply to the proceedings under KAAPA Act also. Hence we hold that the course adopted by the Government in this case of waiting for the report of the Board without immediately considering the representation dated 15.02.2024 submitted by the detenu after reference to the Board was made on 06.02.2024 is proper and legal.

11. As noted above, the report of the Advisory Board was

received on 19.03.2024. However, the Government has taken decision on the representation of the detenu only on 08.04.2024. Therefore, the Government took 19 days time to dispose the representation. No explanation is forthcoming from the side of the respondents for the said period of time. The bounden duty of respondents to consider representation of the detenu sprouts up from Article 22 (5) of the Constitution of India. There is plethora of judgments of the Honourable Supreme Court as well as this Court regarding the necessity to consider the representations without delay.

12. It is true that there is no inflexible rule regarding the time

available to the Government to consider the representation. However, the Government is bound to consider the representations submitted at the earliest and in case of delay, the Government shall be in a position to explain and justify the same to avoid interference by the constitutional courts in the matter. Diligence of a very high degree is expected from the authorities in cases of preventive detention as it involves curtailment of some of the most precious constitutional guarantees. Utmost expedition is essential in handling the representations submitted by the detenus invoking their constitutional right under Article 22 (5). Lethargy, lapses, negligence, delay, callousness etc. on the part of the concerned authorities in dealing with the representations shall be viewed seriously and definitely result in interference by the Constitutional Courts for breach of the mandate of Article 22 (5) of the Constitution of India.

13. The Honourable Supreme Court has declared continued

detention unconstitutional, in cases involving unexplained delay in consideration of representations extending to various periods. In *Narinder Singh Suri Vs Union Of India* [1980 (2) SCC 357], delay involved was of 20 days. In *Durga Shaw vs. Union of India* [1970 (3) SCC 696] the Honourable Apex Court found fault with the concerned

authorities for causing delay of 16 days in considering the representation. In *Harish Pahwa Vs State of U.P And Others* [1981 (2) SCC 710], the delay involved was of 21 days. In *Mahesh Kumar Chauhan Vs Union Of India And Others* [AIR 1990 SC 1455], the delay was of 17 days. However delay of longer periods have been considered as not fatal in some cases. Though delay of 119 days was raised as a ground in *D.Anuradha V. jt.Secretary and Ors* (AIR 2006 SC 3661) the contention was rejected by the Apex Court holding that the delay was properly explained.

14. The principle followed is that the authorities are not inhibited

from explaining the time taken for the disposal of the representations and when the same is not properly explained, the time gap will be considered as fatal delay. It is gainful to note the observations of the Hon'ble Supreme Court in *Rajammal Vs. State of Tamilnadu* [1999

(1) SCC 417] in this regard, which is extracted below:

7. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words as soon as may be in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this court in *K.M.Abdulla Kunhi v. Union of India*. The following observations of the Bench can profitably be extracted here.

It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the

representation, and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of the Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

8. The position, therefore, now is that if delay was caused on

account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

15. The Hon'ble Supreme Court after referring to various precedents on this aspect held as follows in Mahesh Kumar Chouhan's case (supra)

16. Now the unchallengeable legal proposition that emerges

from a host of decisions, a few of which we have referred to above, is that a representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in

Article 22(5) of the Constitution and if any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the court.

Keeping in mind the principles referred above , for want of any explanation for 19 days time taken to take decision on the representation of the detenu after receipt of the report of the Advisory Board we hold that there is fatal delay in this case.

16. As we noted already, there is unexplained delay from the date

of receipt of the report of the Advisory Board from the date of the decision taken on the representation on 08.04.2024 in this case. It is also to be noted that the decision was communicated to the detenu only on 17.04.2024. The delay in conveying the decision taken on the representations is also considerable in this case. On the said aspect also, the Hon'ble Supreme Court has repeatedly held that the delay in communicating rejection of the representation will also render the continued detention illegal. We refer to the judgment of a three judge Bench of the Hon'ble Supreme Court in *Sarabjeet Singh Mokha Vs District Magistrate* [2021 KHC 6675], pointed out by the learned Counsel for the petitioner in this connection. The Hon'ble Apex Court has unequivocally held that the right of the detenu to make a representation and for it to be considered expeditiously would become meaningless without a corroborative right to the detenu to receive the decision on the representation with utmost expeditious.

17. The following observations of the Hon'ble Supreme Court are

relevant in this regard. In guaranteeing a right to make a representation to the detenu, understandably creates a corresponding duty on the State machinery to render this right meaningful. In Section D1 of the judgment, we have detailed this Courts settled precedent on the detenus right to make a representation and for it to be considered expeditiously - failing which the detention order would be invalidated. However, this right would

ring hollow without a corollary right of the detenu to receive a timely communication from the appropriate government on the status of its representation - be it an acceptance or a rejection.

18. As discussed above, we conclude that there is

unexplained delay in taking decision on the representation of the detenu after receipt of the report of the Advisory Board as also in communicating the decision to the detenu. The 1st respondent ought to have diligently and expeditiously considered the representation, once the report of the Advisory Board was obtained and communicated the decision to the detenu within the shortest possible time. However, for a breach of the duty on the part of the Government to consider the representations submitted by the detenu after execution of the detention order, this court need not pronounce upon the validity of the detention order as such. (See the law laid down in *Meena Jayendra Thakur v. Union of India* [(1999) CriL J 4534], *Union of India and Others v. Harish Kumar* [(2008) 1 SCC 195] and *Sayed Abul Ala v. Union of India* [(2007) 15 SCC 208])

19. Since we find the contentions highlighted during the hearing

in favour of the detenu, we need not dilate on the other grounds raised in the writ petition. Hence we declare that the continued detention of the detenu is illegal. He shall be released forthwith in case his custody is not required in any other case. Registry shall communicate the operative portion of this

judgement to the Superintendent of Central Prison, Viyyur .

Sd/ A.MUHAMED MUSTAQUE JUDGE sd/ S.MANU JUDGE jm/ APPENDIX OF WP(CRL.) 487/2024 PETITIONER EXHIBITS Exhibit P1 A TRUE PHOTOCOPY OF THE DETENTION ORDER OF THE 2ND RESPONDENT, NO. DCKLM/15984/2023-M16 DATED

Exhibit P2

A TRUE PHOTOCOPY OF THE FIR CRIME NO.132/2

THE INFORMANT BABU PILLAI DATED 29/01/2020 Exhibit P5 A TRUE PHOTOCOPY OF THE WOUND CERTIFICATE OF THE CO-INJURED NANDU DATED 29/01/2020 Exhibit P6 A TRUE PHOTOCOPY OF THE BAIL ORDER IN CRL.MC NO.343/2020 OF THE 1ST ADDITIONAL SESSIONS JUDGE, KOLLAM DATED 06/03/2020

Exhibit P7 A TRUE PHOTOCOPY OF THE FIR IN CRI

OF ERAVIPURAM POLICE STATION DATED 13/11/2022 Exhibit P11 A TRUE PHOTOCOPY OF THE FIS IN CRIME NO. Exhibit P12 A TRUE PHOTOCOPY OF THE BAIL ORDER IN CRL MC NO.90/2023 DATED 21/01/2023 Exhibit P13 A TRUE COPY OF THE THE FIR IN CRIME NO.1843/2023 OF THE ERAVIPURAM POLICE STATION DATED 02/11/2023 Exhibit P14 A TRUE PHOTOCOPY OF THE COMPLAINT SUBMITTED BEFORE THE SUB DIVISIONAL MAGISTRATE, KOLLAM DATED 12/11/2023 Exhibit P15 A TRUE COPY OF THE APPROVAL ORDER OF THE 1ST RESPONDENT DATED 06/02/2024 Exhibit P16 A TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE DETENUE DATED 15/02/2024 Exhibit P17 A TRUE PHOTOCOPY OF THE ORDER OF THE 1ST RESPONDENT REJECTING THE REPRESENTATION DATED Exhibit P18 A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT CONFIRMING THE DETENTION ORDER DATED 11/04/2024

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