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M. Narayanan Vs. the Commissioner of Police, Coimbatore City and 2 Others

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Court : Chennai

Decided On : Aug-29-1998

Reported in : 1998(2)CTC439

Judge : T. Jayarama Chouta and;V. Bakthavasalu, JJ.

Acts : [National Security Act, 1980](#) -- Sections 3 (2)

Appeal No. : H.C.P.No. 326 of 1998

Appellant : M. Narayanan

Respondent : The Commissioner of Police, Coimbatore City and 2 Others

Advocate for Def. : Mr. Syed Fasiduddin, A.P.P. Adv.

Advocate for Pet/Ap. : Mr. G. Kartikeyan, Adv.

Disposition : Petitions allowed

Judgement :

ORDER

Judgement pronounced by T. Jayarama Chouta, J.

1. The petitioner Narayanan has been detained under section 3(2) of the [National Security Act, 1980](#) read with the orders issued by the Government in G.O.Ms.No.99 Public (Law and Order-F) Department dated 20.1.1998 preventing

him from acting in any manner prejudicial to the maintenance of public order.

2. We deem it unnecessary to mention all the facts leading to the passing of the impugned, order dated 31.1.1998 as the habeas corpus petition has to be allowed on a short ground of non-mentioning of the right of the detenu to make representation to the Central Government in the grounds of detention. In paragraph 11 of the grounds of detention the detaining authority has stated that the detenu has got a right to make representation to the State Government and if so, the said representation has to be addressed to the chief Secretary to the Government of Tamil Nadu, Public (Law and Order) Department, Fort St. George, Chennai - 9. But, the grounds of detention do not say that the detenu has a right to make representation to the Central Government. This would be sufficient to hold in favour of the detenu.

3. In this matter, learned Additional Public Prosecutor after going through the records, brought to our notice the fact that a representation was made by the detenu on 6.4.1998 and submitted that non-mentioning of right to make representation to the Central Government in the grounds of detention would not in any way affect the detenu. But, we have to bear in mind that the order of detention was passed on 31.1.1998 and the said representation was forwarded only on 6.4.1998 after a period of two months. In the grounds of detention, if the detaining authority had mentioned that the detenu has got a right to make representation to the Central Government, the detenu would have made such a representation immediately. In the present case, after a period of two months, the said representation was forwarded to the Central Government. In addition to this, we are of the view that the failure to perform the statutory requirement cannot be condoned. It is a bounden duty of the detaining authority to mention in the grounds of detention that the detenu has got a right to make representation to the Central Government which has not been mentioned in the grounds of detention. The fact that the representation was made by the detenu after a period of two months will not cure such a defect. On this ground, the detenu is bound to succeed.

4. In the result, the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless his detention is otherwise required.

This habeas corpus petition is allowed.

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