

Nasir Alias Naser Vs. State

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Court : Chennai

Decided On : Jun-20-2000

Reported in : 2000CriLJ4335

Judge : E. Padmanabhan and ;R. Balasubramanian, JJ.

Acts : Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982; ;
[Constitution of India](#) - Article 22(5)

Appeal No. : Habeas Corpus Pet. No. 1860 of 1999

Appellant : Nasir Alias Naser

Respondent : State

Advocate for Def. : G.M. Gunasekaran, Govt. Adv.

Advocate for Pet/Ap. : P. Venkatasubramanian, Adv.

Disposition : Petition allowed

Judgement :

R. Balasubramanian, J.

1. The petitioner is detained as a goonda by detention order dated 16-9-1999 under the Tamil Nadu Act 14 of 1982. Heard the learned counsel on either side.

2. After hearing the learned counsel at length on more than one point, we are inclined to dispose of the habeas corpus petition in favour of the detenu on only one ground, namely the Honourable Members of the Advisory Board having refused to permit the detenu to have an assistant with him at the time of personal hearing despite request. It may be noticed here that there are as many as 17 adverse cases stated to have taken place during the period from June, 1999 to August, 1999. The ground case is stated to have taken place on 5-9-1999. The arrest of the detenu is shown to have been done in the ground case first and consequently in all the adverse cases later on. In the backdrop of the above facts it appears that the detenu was asked to appear before the Advisory Board for personal hearing on 15-10-1999. In person he had presented a written representation to the Advisory Board on that date. In that representation he had made the following request :

(Vernacular matter is omitted....Ed.)

This means in English that in order to explain whatever he had stated in that representation his friend may be permitted to assist him. The Advisory Board, in its report dated 15-10-1999 had stated as follows :

The detenu in his representation dated Nil has requested permission for his friend to assist the detenu at the time of personal hearing of the detenu, but the detenu has himself represented his case well before the Advisory Board. Hence there is no need for any assistance to the detenu at the time of personal hearing.

This has the effect of denying the detenu an effective opportunity of having an assistant as provided for in the grounds of detention and communicated to him. The Honourable Supreme Court of India in P. Murugesan v. State 1999 SCC (Cri) 1022 it has held as follows :

The very fact that the detenu did not succeed in convincing the Advisory Board of his points of view would prima facie indicate that the competence of the detenu to drive his points home was not as satisfactory as it was pictured by the Advisory Board. Secondly, the Advisory Board did not even test the competence of the friend who was standing next door as to whether the presentation of the facts

could have been done in a better way by him.

There is no doubt that by the refusal of request made by the detenu to have the assistance of the friend who was present at the same place. Article 22(5) of the Constitution is violated and the detention is consequently vitiated.

This judgment squarely applies to the case on hand. However the learned Government Advocate relying upon the judgment of the Supreme Court in Vijay Kumar v. Union of India : 1988 CriLJ951 would contend that unless and until the detenu informs in categorical and in certain terms that the person whom he requires as assistant is very much available there outside the chambers of the Board, the Board is not under any legal obligation to provide him such an assistance. In elaborating his arguments he invited our attention to paragraph 21 of that judgment where we find the following observation of the Honourable Judges of the Supreme Court:

There is no reason for not accepting the statement of the detaining authority that the appellant was permitted by the Advisory Board to have the assistance of an advocate or a friend at the time of hearing, but the appellant did not avail himself of the same. In the circumstances, we do not think that there is any substance in the contention made on behalf of the appellant that the Advisory Board acted illegally and in violation of the principles of natural justice in not examining the witnesses produced by the appellant at the meeting of the Advisory Board and in not giving permission to the appellant to have the assistance of his friend.

In the above extracted case there was material before the Honourable Supreme Court of India that the detenu was provided with an opportunity and yet he did not avail the same. Such a material is not available in the case on hand. At the risk of repetition we would like to point out that the permission to have the assistance was not refused on the ground that the person whose assistance the detenu wanted to have during the personal hearing was not available at that time. But on the other hand the categorical reason given by the Advisory Board while refusing the permission to the detenu as asked for is that as the detenu himself was presenting his case well, there was no need to permit him to have the assistance of a person. This does not rule out totally the possibility of the person whose assistance the

detenu wanted to have being available at that time outside the chambers of the Board sitting. There is no material on record to show that the detenu was afforded an opportunity and he, did not avail the same. Therefore the judgment of the Supreme Court of India in 1988 SCC (Cri) 293 : 1988 Cri LJ 951 cited supra, brought to our notice by the learned Government Advocate is clearly distinguished with the facts of the case on hand. On the other hand, on the facts of this case we hold that the judgment in Murugesan's case (cited supra) would squarely apply to the case on hand and we are of the respectful opinion that the Board refusing permission to the detenu to have the assistance of the person on the ground stated by it, is violative of the principles of natural justice which vitiates the order of detention. Accordingly the habeas corpus petition is allowed. The impugned order of detention is quashed. The detenu is ordered to be set at liberty forth-with unless his detention is required in; connection with any other case.

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