

CASE NO.:
Appeal (civil) 691 of 2006

PETITIONER:
Senthamilselvi

RESPONDENT:
State of Tamil Nadu and Anr.

DATE OF JUDGMENT: 09/06/2006

BENCH:
Arijit Pasayat & C.K. Thakker

JUDGMENT:
JUDGMENT

Arijit Pasayat J.

Leave granted.

The order of detention passed in respect of Ganapathy @ Undakkuli @ Selva Ganapathy (hereinafter referred to as the 'detenue') was questioned by his mother the appellant by filing a Habeas Corpus Petition before the Madras High Court. The same was dismissed by the impugned judgment.

Mainly three grounds were urged in support of the Habeas Corpus Petition. It was submitted that there was delay in disposal of the representation. Further that the detenue had not filed any application for bail, therefore, the detaining authority had committed error in holding that there was imminent possibility of his coming out on bail. Further the detaining authority had relied upon the confessional statement of a co-accused without supplying copy thereof. That denied detenue the opportunity of making an effective representation. The High Court did not find any substance in the aforesaid submission and dismissed the petition.

In support of the appeal, learned counsel for the appellant submitted that there was delay in disposal of the representation. It was further submitted that the document which was relied upon has not been supplied to the appellant.

Learned counsel for the respondent-State, in response, submitted that these stands were specifically dealt with and the High Court has discussed the factual and legal position positions to reject them.

Coming to the plea that there was delay in disposal of the representation it is to be noted that the order of detention is dated 1.12.2005. The representation was sent on 11.12.2005 which was received by the respondents on 15.12.2005. The details were called for on 16.12.2005 which were received on 20.12.2005. The file was submitted on 21.12.2005 and dealt with by the Under Secretary and Deputy Secretary on 22.12.2005. The concerned Minister passed order on 22.12.2005 and the order of rejection which was passed on 27.12.2005 was issued on 28.12.2005 which was sent to the Superintendent of the Jail where the detenue was incarcerated, which was communicated to the detenue. It was received by the prison authorities and it was served on the detenue on the day it was received by the Jail authority. The factual scenario indicated above indicates that the representation was dealt with, with utmost expedition. There can be no hard and fast rule as to the measure of reasonable time and each case has to be considered from the facts of the case and if there is no negligence or callous inaction or avoidable red-tapism on the facts of a case, the Court would not interfere. It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical

routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable. That is not the case at hand. It may be noted that that writ petition was filed on 22.12.2005, even before the order of rejection was served. That being so the detenu cannot make grievance that the State had not explained the position as to how his representation was dealt with.

There is also no substance in the plea that the confessional statement of the co-accused was relied upon, but the copy thereof was not supplied. The grounds of detention merely refer to the confession by the co-accused. That does not form foundation for the detention. On the other hand it appears that the detenu himself made a confession and that was the main factor on which the order of detention was founded. There is distinction between a relied upon document and a document which has been referred to without being relied upon. The distinction has been noticed by this Court in *Powanammal v. State of T.N. and Anr.*, [1999] 2 SCC 413 at para 9. It was observed as follows:

"However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

A bare reading of the grounds of detention in the present case shows that the detenu was not arrested on the basis of the co-accused's statement. On the contrary, it has been clearly stated in the ground of detention the detenu was arrested on suspicion. It has been stated in paragraph 3(iii) of the order of detention. The same reads as follows:

"On further investigation on 3.10.2005 at about 1400 hrs. near Vidayalaya bus stop, Palladam Road, Veerapandi, Tiruppur. Inspector of Police Tiruppur Rural arrested one Thiru. Selva Ganapathy on suspicious ground and on enquiry he accepted his participation in the above occurrence and confessed. He also produced a dagger used by him in the occurrence from a thorny bush near Vanjipalayam pirivu in Iduvampalayam to Iduvai Road, Tirupur was seized through a mahazar in the presence of witnesses. Thiru Ganapathy @ Undakuli @ Selva Ganapathy was produced before Judicial Magistrate No.II Tiruppur on 3.10.2005 and remanded to judicial custody till 14.10.2005 and lodged at Central Prison, Coimbatore."

(Underlined for emphasis)

It is not disputed that the confessional statement of the detenu was supplied to him. Above being the factual position the High Court was justified in coming to the conclusion that though reference was made to co-accused's statement that was not relied upon for the purpose of detention.

It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement that the detaining

authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipsi-dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati v. Govt. of NCT of Delhi and Anr.*, [2002] 7 SCC 129. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not "normal" case. The High Court was justified in rejecting the stand of the appellant.

Looked from any angle the Judgment of the High Court does not warrant interference. The appeal is dismissed.

Criminal Appeal No. 692/2006.

Arising out of SLP (Crl.) No. 1811/2006.

Leave granted.

Factual position in this case is similar to those involved in Criminal Appeal, arising out of SLP (Crl.) No. 1811 of 2006. For reasons indicated in the said judgment which are applicable to the present case, this appeal stand dismissed.