

SUPREME COURT OF INDIA

P. Murugesan

Vs.

State

(S Ahmed and K Thomas JJ.)

15.04.1999

ORDER

1. Leave granted.

2. Appellant is the brother of one Velu who has been detained under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14/1982) pursuant to an order of detention dated 24-6-1998 passed by the District Magistrate, Tiruchirappalli. A writ petition (Habeas Corpus) was moved by the appellant on various grounds in challenge of the detention of the aforesaid detenu, principal among them were; (i) that he was not liable to be detained in view of the acquittal orders passed by the criminal Courts in all the prosecutions launched against him, (ii) that there was considerable delay in the disposal of the representation made by him, and (iii) that the Advisory Board which considered his representation refused to allow him to have the assistance of a friend. A Division Bench of the Madras High Court considered all the aforesaid grounds, but did not find favour with any one of them and finally dismissed the writ: petition.

3. After hearing both the sides, we are of the view that appellant is entitled to succeed on the last ground mentioned above, namely, denial of the services of a friend in spite of the detenu making a request for it.

4. The factual position appears to be strongly favouring the detenu in this case, as he was informed by the Commissioner of Police, Tiruchirappalli that his matter would be considered by the Advisory Board and that he was free to avail himself of the assistance of a friend/relative if so desired at the time of personal hearing by the Advisory Board. The only condition mentioned in the aforesaid letter sent by the Commissioner of Police, Tiruchirappalli was that the friend whom he might

appoint, should not be an advocate and that the friend should be present at the time of personal hearing made before the Advisory Board.

5. It is an admitted fact that the detenu informed the Advisory Board that a friend by name Natarajan was available and was standing just outside the room where the Advisory Board held deliberations and a request was made by the detenu to avail himself of the services of the said friend. It is also an admitted fact that the Board refused to give him the permission sought for on the sole ground that on hearing the detenu personally, the Advisory Board was satisfied that the detenu was a person capable of making his representation effectively.

6. 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.

7. This Court has stated time and again that denial of such an opportunity to a detenu, if he made such a request and when such a friend was present, would violate the constitutional provision and would vitiate the detention vide *Abdul Zabbar v. State of Rajasthan* and *Anil Vats v. Union of India*.

In the second cited decision, a plea was made that the detenu was capable of presenting his cause effectively, but this Court was not persuaded to give accord to the same. That was a case where the detenu was a graduate and was noted to be competent to defend himself. Nevertheless the Court pointed out the following.

We do not see any valid reason why the detenu should have been refused the assistance of a friend. It is true that the Advisory Board has to report within the prescribed period and the meeting may brook no delay. But a timely request of the detenu for being allowed to be assisted by a friend ought to be considered. It has not been denied in this case that the person proposed to assist the detenu was present at the relevant time and place. Mr. Bhandari submits that *A. K. Roy* case is distinguishable on the ground that the detenu therein was not a graduate as in this case. We are of the view that it cannot be a sufficient ground. He may not properly be served by his memory, he may be nervous, incoherent and his faculties may be benumbed. Assistance of a friend would result in fairness of procedure towards the detenu. We, therefore, feel that the procedural safeguard, as envisaged under Article 22(5) was not satisfied in this case, with the result that continuation of detention of the petitioner would be rendered illegal.

8. The instant case is very much similar regarding the plea for getting the services of a friend to present the detenu's cause before the Advisory Board. We have no reasons to take a different stand in this case.

9. In the view we take on the aforesaid ground, it is not necessary for us to proceed to examine the remaining grounds urged by the learned Counsel for the appellant during his arguments. We have 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. We, therefore, allow this appeal, set aside the judgment under challenge and quash the detention order pursuant to which the detenu is now continuing in jail. We order the

detenu to be set free forthwith, unless required in any other case.