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UNION OF INDIA AND ORS.

*v.*

LAISHRAM LINCOLA SINGH @ NICOLAI

(Criminal Appeal No. 519 of 2008)

MARCH 24, 2008

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**[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

*Preventive Detention – Detention under National Security Act – Writ Petition challenging detention on the ground* C *of delay in disposal of representation of detenu – High Court issuing writ of Habeas Corpus – On appeal, held: In the facts of the case, order of High Court unsustainable – Constitution of India, 1950 – Article 226 – National Security Act – s. 3 (3).*

**Detention order was passed against the respondent** D **in exercise of powers conferred u/s 3 (3) of National Security Act. The period of detention was fixed for 12 years. Respondent filed writ petition seeking writ of Habeas Corpus against the detention order primarily on the ground that there was unexplained delay in disposing** E **of the representation made by the detenu. High Court allowed the petition accepting the plea of delay.**

**In appeal to this court appellant-State contended that there was no delay in disposing of the representation.**

F **Partly allowing the appeal, the Court**

**HELD: In the facts of the case, the order of the High Court is unsustainable. The period of detention fixed by the order of detention being over, it is open to the detaining authority to consider whether there is any need** G **for detaining the respondent as the situation stands now. [Para 8] [275-F, G]**

*Senthamilselvi v. State of T.N. and Anr.* **2006 (5) SCC 676;** *Vinod K.Chawla v. Union of India and Ors.* **2006 (7) SCC**

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**337 – referred to.** A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 519 of 2008.

From the final Judgment and Order dated 05.04.2006 of the High Court of Gauhati, Gauhati in W.P. (Crl.) No. 53 of 2005. B

Vikas Singh, ASG, Abha R. Sharma and Sushma Suri for the Appellants.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted. C

2. Challenge in this appeal is to the judgment of the Division Bench of the Guwahati High Court, Imphal Bench allowing the habeas corpus petition filed by the respondent. The habeas corpus petition was filed questioning the order of detention passed by the District Magistrate, Manipur, Imphal West, dated 23.9.2005 in exercise of powers conferred by sub-section (3) of Section 3 of the National Security Act, 1980 (in short the 'Act') read with Home Department's order No.17(1)/49/80-H(Pt) dated 6.9.2005, which was approved by the State Government under order No.17(1)/947/2005-H dated 5.10.2005 and again confirmed by order of State Government being No.17(1)/947/2005-H dated 7.11.2005 fixing the period of detention for 12 months from the date of detention. The order of detention was challenged primarily on the ground that there was unexplained delay in disposing of the representation made by the detenu. The High Court accepted the plea that there was an unexplained delay. D E F

3. Learned counsel for the appellants submitted that the representation was made on 12.10.2005 and the Central Government received the same on 31.10.2005. It immediately wrote to the State Government to give its parawise comments. Such comments were received on 22.11.2005 and immediately thereafter after consideration of all relevant aspects the order of rejection was passed on 29.11.2005 which was G H

A communicated to the detenu on 30.11.2005.

4. It was submitted that the High Court did not even consider the explanation given by the appellants to show that there was, in fact, no delay. No reason has been indicated by the High Court in the impugned order to show any application
B of mind to the relevant aspect.

5. There is no appearance on behalf of respondent.

6. In *Senthamilselvi v. State of T.N. and Anr.* (2006 (5) SCC 676) it was held as under:

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"6. 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
D 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
E issued on 28.12.2005 which was sent to the Superintendent of the Jail where the detenu was incarcerated, which was communicated to the detenu. It was received by the prison authorities and it was served on the detenu on the day it was received by the Jail
F authority. The factual scenario indicated above indicates that the representation was dealt 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
G 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
H 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 the 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."

7. In *Vinod K.Chawla v. Union of India and Ors.* (2006 (7) SCC 337), it was observed as under:

"13. The contention raised cannot be judged by any straitjacket formula divorced from facts. This has to be examined with reference to the facts of each case having regard to the volume and contents of the grounds of detention, the documents supplied along with the grounds, the inquiry to be made by the officers of different departments, the nature of the inquiry, the time required for examining the various pleas raised, the time required in recording the comments by the authorities of the department concerned, and so on.

**14.** In *L.M.S. Ummu Saleema* v. *B.B. Gujaral (1981 (3) SCC 317)* it was held that there can be no doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed in *Frances Coralie Mullin* v. *W.C. Khambra (1980 (2) SCC 275)* (SCC p. 279, para 5), "the time-imperative can never be absolute or obsessive". In *Madan Lal Anand* v. *Union of India (1990 (1) SCC 81)* the representation dated 17-1-1989 of the detenu who was detained under COFEPOSA was rejected after more than a month on 20-2-1989. After referring to *L.M.S. Ummu Saleema* it was held that the detaining authority had explained the delay in disposal of the representation and accordingly the order of detention cannot be faulted on that ground. In *Kamarunnissa* v. *Union of India (1991 (1)*

*SCC 128)* the representation made by the detenu on 18-12-1989 was rejected on 30-1-1990 and it was contended that there was inordinate delay in consideration of the representation. In the explanation given in the counter-affidavit filed in reply, it was submitted that considerable period of time was taken by the sponsoring authority in forwarding its comments. It was contended on behalf of the detenu that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could not be taken into consideration. The contention was repelled by this Court and it was observed that consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. It was further emphasised that whether the delay in considering the representation has been properly explained or not would depend upon the facts of each case and cannot be judged in vacuum. Similarly, in *Birendra Kumar Rai* v. *Union of India (1993 (1) SCC 272)* the petitioner made a representation against his detention on 22-12-1990 which was rejected by the Central Government after a month on 25-1-1991. It was observed that the explanation offered for the delay in consideration of the representation was not such from which an inference of inaction or callousness on the part of the authorities could be inferred and accordingly the challenge on the ground of delay was rejected. The subsequent decisions of this Court are also on the same lines and we do not consider it necessary to refer to them as the principle is well settled that there should be no inaction or lethargy in consideration of the representation and where there is a proper explanation for the time taken in disposal of representation even though it may be long, the continued detention of the detenu would not be rendered illegal in any manner.

**15.** The grounds of detention in the present case are a long one running into 35 paragraphs which were accompanied by 82 documents running into 447 pages.

The representation made by the appellant was also a fairly long one. The representation made by the appellant on 24-3-1998 was received by the Ministry on 27-3-1998. The comments of the sponsoring authority were called on 30-3-1998 which were received on 17-4-1998. The comments were placed before the Secretary (R) through the ADG on 22-4-1998 (18th and 19th being holidays). The decision of the Central Government was taken and communicated on 29-4-1998 (25th and 26th being holidays). The representation was also considered by the detaining authority in the meantime and was rejected on 21-4-1998. In the additional affidavit filed on behalf of the sponsoring authority before the High Court, it was stated that the representation was received by them on 2-4-1998 and the comments were dispatched on 17-4-1998. During this period, there were holidays on 4th, 5th, 8th to 12th April, and only seven working days were available. Again there were holidays on 18th, 19th, 25th and 26th April. Having regard to the facts and circumstances of the case, we are clearly of the opinion that the entire time taken in consideration and disposal of the representation made by the appellant has been fully explained and it cannot be said by any stretch of imagination that there was any inordinate delay or unexplained delay in considering the representation made by the appellant. The challenge to the detention order made on the ground of delay in consideration of the representation made by the appellant has no substance and deserves to be rejected."

8. The order of the High Court is clearly unsustainable and is set aside. The period of detention fixed by the order of detention being over, it is open to the detaining authority to consider whether there is any need for detaining the respondent as the situation stands now.

9. The appeal is allowed to the aforesaid extent.

K.K.T. Appeal partly allowed.