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P. PAULSAMY  
v.  
UNION OF INDIA & ANR.

MAY 14, 1999

B

[G.T. NANAVATI AND S.N. PHUKAN, JJ.]

C

*Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988—Section 13(1)—Order of detention—Unreasonable delay on part of government in considering representation of detenu—Whether fatal—Held, yes—Order of detention liable to be quashed.*

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An order of detention u/s 3(1) of the Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988, was passed to prevent the detenu from engaging in illicit trafficking in narcotic drugs. The detenu made a representation on 26-10-1998 which was rejected on 12-11-1998 and detenu was informed by letter dated 13-11-98. This writ petition had been filed by the detenu under Article 32 of the Constitution of India challenging his continued detention as illegal on ground of unreasonable delay on the part of the Government in considering his representation.

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Union of India justified the delay by stating that representation of the detenu was received in the office on 28-10-1998 which was received on 10-11-1998 and the representation along with comments was submitted to the Secretary of the Ministry of Finance on 11-11-98 which was rejected on 12-11-98 after due consideration.

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Allowing the writ petition and quashing the order of detention, this Court.

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**HELD :** In preventive detention cases, though the delay on the part of the government in considering the representation of detenu, by itself is not fatal, the delay which remains unexplained would be unreasonable. In the instant case, though the representation was received on 28-10-1998, comments of Sponsoring Authority were called for on 29-10-1998 which were received on 10-11-1998. The order calling for comments of the Sponsoring Authority was not passed by any of the officers empowered. The representation was dealt with in a routine manner and there was no application

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of mind by the competent officer as to whether it was necessary to call for

comments of the Sponsoring Authority. Therefore, this delay from 28-10-98 to 10-11-1998 being uncalled for has to be regarded as unreasonable and therefore, fatal. [738-F-H] A

*Venmathi Selvam (Mrs.) v. State of Tamil Nadu & Anr., (1998) (5) 510, relied on.* B

CRIMINAL APPELLATE JURISDICTION : Writ Petition (CRL.) No. 194 of 1998.

From the Judgment and Order dated 13.8.98 of the Madras High Court in Crl. O.P. No. 8785 of 1998. C

R.K. Jain, K. Subramaniam, Mahesh Agrawal, E.C. Agrawala, Atul Sharma, Rishi Agrawal and Triveni Potekar for the Petitioner.

P.P. Malhotra, Rajeev Sharma, B.K. Prasad and Y.P. Mahajan for the Respondents. D

The Judgment of the Court was delivered by

**S.N. PHUKAN, J.** This writ petition has been filed by the detenu under Article 32 of the Constitution of India. The Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue who was empowered under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ( for short the Act), being satisfied from the records that it is necessary to prevent the detenu from engaging in illicit trafficking in narcotic drugs in future, passed the order of detention on 28th September, 1998. On the same day grounds of detention were issued and the detenu was informed that he could make a representation against the order of his detention, to the Detaining Authority and/or the Central Government addressed to the Detaining Authority or to the Secretary to the Government of India, Ministry of Finance, Department of Revenue. On 26.10.1998 the detenu sent a representation addressed to (1) the Advisory Board. (2) the Secretary to the Government of India, Ministry of Finance and (3) the Detaining Authority. E F G

In the counter affidavit dated 11.05.99 filed on behalf of the Union of India i.e. respondent No. 1 it has been stated that the said representation was received in the office on 28.10.1998 and comments from the Sponsoring Authority were called for by letter dated 29.10.98 and the same were received on 10.11.98. The representation along with comments was submitted to the H

- A Secretary of the Ministry of Finance on 11.11.98 which was rejected on 12.11.98 after due consideration and detenu was informed by letter dated 13.11.98 which was received by the detenu on 18.11.98. In the counter affidavit the order dated 7th July, 1995 issued by the Minister of Finance has been annexed and we find that power of revocation of detention orders under
- B Section 12 of the Act has been deligated to the Secretary or Additional Secretary or Joint Secretary (Narcotics/in the Ministry of Finance (Department of Revenue), Government of India.

- C It has been urged by Mr. R.K. Jain, learned Senior counsel for the petitioner that there was unreasonable delay on the part of the Government in considering the representation of the detenu and, therefore, his continued detention is illegal.

Mr. P.K. Malhotra, learned senior counsel for the respondents justified the delay on the basis of the counter affidavit filed by the Union of India.

- D Mr. Jain has placed reliance on a decision of this Court (rendered by one of us Nanavati, J.) in *Venmathi Selvam (Mrs.) v. State of Tamil Nadu & Anr.*, [1998] 5 SCC 510. This Court held that though the delay was not long, it had remained unexplained and further though the delay by itself was not fatal, the delay which remains unexplained would be unreasonable. It was further observed that inspite of this well settled legal position, the State
- E Government failed to explain satisfactorily that it had not dealt with the representation of the detenu as promptly as possible. The Court found in that case that representation was dealt with in routine manner and in view of indifference on the part of the Government the continued detention of the detenu was held to be illegal.

- F Examining the present case in hand, in the light of the ratio laid down above, we find that though the representation was received on 28.10.1998, comments of Sponsoring Authority were called for on 29.10.1998 which were received on 10.11.1998. From the records we find that the order for calling for comments of the Sponsoring Authority was not passed by any of the Officers
- G empowered by the above orders of Minister dated 7th July, 1995. Therefore, we hold that the representation was dealt with in a routine manner and there was no application of mind by the competent officer as to whether it was necessary to call for comments of the Sponsoring Authority. In other words, this delay from 28.10.98 to 10.11.98 being uncalled for has to be regarded as unreasonable and, therefore, fatal in view of the ratio laid down by this Court
- H in *Venmathi Selvam (Mrs.)*(supra). We, therefore, make the rule absolute,

quash and set aside the impugned order of detention and direct that detenu A be released forthwith unless he is required to be kept in jail in connection with some other case.

R.A.

Petition allowed.