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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED:19.12.2013**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.TAMILVANAN**

**AND**

**THE HONOURABLE MR.JUSTICE V.S.RAVI**

**H.C.P(MD)No.981 of 2013**

Selvanayagam

.. Petitioner

vs.

1.The Secretary to Government  
Prohibition and Excise Department  
Secretariate, Chennai

2.The District Collector-cum-District Magistrate  
Kanyakumari District

.. Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of the second respondent passed in his proceedings in PD.No.4/2013, dated 03.04.2013 and set aside the same and consequently direct the respondents to produce the detenu Muralitharan @ Murali, S/o.Selvanayagam, aged about 42 years, before this Court now he is detained at Palayamkottai Central Prsion and set him at liberty.

For petitioner

: Mr.K.P.Narayanakumar

For respondents

: Mr.C.Ramesh

Additional Public Prosecutor

**ORDER**

**(Order of the Court was made by S.TAMILVANAN,J)**

Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents.

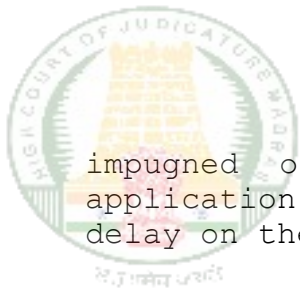
2. The Habeas Corpus Petition has been filed under Article 226 of the Constitution of India to set aside the detention order in PD.No.4/2013, dated 03.04.2013, passed by the second respondent, the District Collector/District Magistrate, Kanyakumari District.

3. The petitioner herein is the father of the detenu Muralitharan @ Murali, aged about 42 years. The impugned detention order was passed by the second respondent invoking the powers under sub-section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982

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(Tamil Nadu Act 14 of 1982) [in short "the Act"].

4. Learned counsel appearing for the petitioner submitted that the



impugned order is not legally sustainable on the ground of non-application of mind, lack of subjective satisfaction and unexplained delay on the part of the authorities, who are the respondents herein.

5. Per contra, learned Additional Public Prosecutor submitted that the order was properly passed by the second respondent as per the provisions of law and according to him, which warrants no interference. Further, the learned Additional Public Prosecutor submitted that there are two adverse cases registered against the detenu Muralitharan @ Murali, apart from the ground case. The first adverse case relates to Cr.No.13 of 2011, All Women Police Station, registered under Sections 120 (B), 508, 506(ii), 376, 493, 420 I.P.C., and Section 4 of Tamil Nadu Prevention of Women Harassment Act. The alleged offence is that from 14.06.2010 upto 21.07.2011, at Maruthancode, the detenu had cheated the de facto complainant by telling phonographic words and received a sum of Rs.15,000/- from her and often had sex with her in the name of God. The second adverse case relates to Cr.No.299 of 2011, Marthandam Police Station, under Section 120(B), 508, 506(ii), 376, 384, 420 I.P.C., and Section 4 of Tamil Nadu Prevention of Women Harassment Act. The alleged offence relating to the second adverse case is that from 05.05.2011 to 10.05.2011, at Maruthancode, the detenu had cheated the de facto complainant by telling phonographic words and often had sex with her in the name of God. The ground case relates to Cr.No.204 of 2013, Marthandam Police Station, under Sections 341, 294(b), 307, 323 and 506 (ii) IPC. As per the ground case, the detenu waylaid the de facto complainant abused with filthy language and further attempted on his life and caused simple injury.

6. Admittedly, as against the detenu no case was ended in conviction and the adverse cases are pending for trial. As contended by the learned counsel appearing for the petitioner, having gone through the material papers and the grounds raised by the sponsoring authority, we are of the view that there is no imminent possibility for the detenu coming out on bail. It is submitted by the learned Additional Public Prosecutor that in another case relating to some other accused, wherein the detenu is not a co-accused, bail was granted by the Court below. However, that would not be a reason to state that there is imminent possibility for the detenu herein coming out on bail on the ground that an accused was enlarged on bail in some other case. When there is no subjective satisfaction based on the material papers available on record, it cannot be disputed that it would be a case of non-application of mind to disturb the detention order.

7. It is also seen from the copy of the proforma furnished by the learned Additional Public Prosecutor that the detention order was passed on 03.04.2013 by the second respondent, the District Collector/District Magistrate, Kanyakumari District and the representation was made on 18.04.2013 and the same was received only on 22.04.2013. Remarks were called for on 23.04.2013 and the same was stated as received on 02.05.2013. Subsequently, the matter was dealt with by the Deputy Secretary on 02.05.2013 and the representation made on behalf of the detenu was rejected, after it was considered by the concerned Minister. The copy of the order was sent to the petitioner only on 07.05.2013.



8. Learned Additional Public Prosecutor has not disputed the fact that apart from the holidays, there is a delay of five days. In this case as stated by the learned Additional Public Prosecutor, it is seen that 27.04.2013, 28.04.2013 and 01.05.2013 are holidays. Though there were eight days delay in between the date on which remarks called for (23.04.2013) and remarks received (02.05.2013), even after deducting three days as holidays, there is a delay of five days, for which there is no satisfactory explanation from the respondents. As per the averments made in the impugned order, it is seen that the alleged offences against the detenu as per the ground case cannot be construed as heinous offences and the delay has not been satisfactorily explained.

9. Learned Additional Public Prosecutor relied on the decision of the Supreme Court, in **D.M.Nagaraja Vs. Government of Karnataka and others**, reported in **(2011) 10 SCC 215**, and submitted that there is no obligation on the part of the Detaining Authority or the State Government to dispose of the representation made on behalf of the petitioner, before the order of detention is confirmed.

10. In a catena of decisions rendered by the Honourable Apex Court, as well as various High Courts, it has been made clear that the delay in disposing the representation would vitiate the order of detention.

1. *Binod Singh Vs. District Magistrate, Dhanbad* (AIR 1986 SC 2090).
2. *Rivadeneyta Ricardo Agustin Vs. Government of the NCT of Delhi* (1994 SCC (Cri) 354).
3. *Rajammal vs. State of Tamil nadu and another* (1999 SCC (Cri) 93).
4. *Senthil Kumar vs. District Magistrate and District Collector* (2008 (2) MLJ (Cr1.) 1071).
5. *Jakkulin Vs. State of Tamil nadu* (2008 (2) MLJ (Cr1.) 1571).
6. *State of Tamil nadu rep. by its Secretary to Government, Home, Prohibition and Excise (ix) Department, Secretariat, Chennai and another* (2009(1) MWN (Cr.) 400 (DB)).

10.1. In the decision, in **Prabhu Dayal Deorah Vs. District Magistrate, Kamrup and others**, (AIR 1974 SC 183), the Supreme Court has held that the constitutional requirement of Article 22(5) will not be satisfied, unless the detenu is given the earliest opportunity to make a representation against the detention order. Thus, it is clear that the State has a concomitant and corresponding duty to dispose of the representation, without any delay. Therefore, the Honourable Supreme Court has repeatedly held that the State government is bound to consider the representation made on behalf of the detenu, at the earliest possible time, as it is a mandatory obligation cast on it, by Clause (5) of



Article 22 of the Constitution of India.

10.2. In **Ramamurthy Vs. The State of Tamil Nadu (2006(4) CTC 181)**, this Court quashed the order of detention on the ground of unexplained delay in considering the representation made on behalf of the detenu based on the decisions rendered by the Apex Court.

10.3. A Constitution Bench of the Supreme Court, in **Jayanarayan Sukul Vs. State of West Bengal, (1970 (1) SCC 219)**, it has been held as follows:-

"The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities."

10.4. The Supreme Court, in **Mahesh Kumar Chauhan alias Banti Vs. Union of India & Others, (1990) 3 SCC 148**, while dealing with a case of preventive detention, has observed that an undue and unexplained delay in the disposal of the representation of the detenu is in violation of Article 22(5) of the Constitution of India, rendering the detention order invalid and accordingly, the detention order was quashed.

10.5. In **Rama Dhondu Borade Vs. V.K.Saraf, Commissioner of Police and Others, (1989) 3 SCC 173**, the Supreme Court has observed that a representation of a detenu, whose liberty is in peril, should be considered and disposed of, as expeditiously as possible. The continued detention will render itself impermissible and invalid as being violative of Article 22(5) of the Constitution of India. If any delay occurs in the disposal of a representation, such delay should be explained, by the appropriate authority, to the satisfaction of the Court, otherwise the detention order is liable to be quashed.

10.6. In the decision, in **Venkatesan @ Maya Venkatesan (2007(1) MLJ (Crl.) 1176)**, it has been held that the appropriate Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of the delay, but how it is explained by the Authority concerned is the deciding factor of the detention order.

10.7. In the decision, in **Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamilnadu, Fort St. George, Chennai-9 and another 2007(2) MWN (Cr.) 145 (DB)**, this Court had held that an unexplained delay of three days in the disposal of the representation, made on behalf of the detenu, would be sufficient to set aside the detention order and accordingly, a Division Bench of this Court quashed the order.

10.8. In **G.Kalaiselvi Vs. The State of Tamil Nadu (2007(5) CTC 657)**, a Full Bench of this Court had held that it is well recognised that the



authorities concerned are duty bound to afford to the detenu an opportunity of making a representation and such right of the detenu, obviously, encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay, and the result of such representation should also be communicated to the detenu without any such delay.

10.9. In ***Rekha Vs. State of Tamilnadu (2011(5) SCC 244)***, it was held that the personal liberty of any person is an important fundamental right, which has to be protected, as guaranteed under Article 21 of the Constitution of India. As the personal liberty is so sacrosanct and so high in the scale of constitutional values, there is a mandatory on the part of the Detaining Authority to follow meticulously the procedures established by law. The procedural safe guards are required to be zealously watched and enforced by Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

10.10. In ***K.M.Abdulla Kunhi Vs. Union of India, (1991(1) SCC 476)***, it was held that any unexplained delay in the disposal of the representation made on behalf of the detenu would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

10.11. This Court, in its order, dated 9.11.2011, in ***Smt.Sowdun Bivi Vs. The State of Tamilnadu (H.C.P.No.108 of 2011)***, has clarified the position relating to the issue regarding the consideration of the representation made on behalf of the detenu, referring to the Full Bench decision of this Court, in ***Rajammal Vs. State of Tamil Nadu and another (1999 AIR SCW 139)***. Thus, it is clear, from the catena of cases decided by the Supreme Court, that there is an obligation cast on the Detaining Authority, as well as the State Government, to consider the representation made on behalf of the detenu, as early as possible, as per the mandate enshrined in Clause (5) of Article 22 of the Constitution of India.

10.12. In ***Rashid sk. v. State of West Bengal***, reported in, ***1973 (3) SCC 476***, the Supreme Court has held that the right to represent and to have the representation being considered at the earliest point of time, flows from the constitutional guarantee of right to personal liberty and such right is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

10.13. In ***Ram Sukrya Mhatre v. R.D.Tyagi and Others, 1992 Supp (3) SCC 65***, the Supreme Court has held thus;-

"...the right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal not only by the State Government under the relevant provision of the Statute, but also by the Central Government. But in each case it is one of fact to be ascertained whether the Central Government or State Government, as the case may be,



has caused delay due to negligence, callous inaction, avoidable re-tapism and undue protraction by the authorities concerned. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India."

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10.14. In **Aslam Ahmed Zahir Ahmed Shaik v. union of India and others**, reported in **1989 SCC (Cr1) 554**, the Supreme Court has held that an avoidable and unexplained delay in the disposal of the representation would result in rendering the continued detention of the detenu illegal and constitutionally impermissible.

10.15. In **Tara Chand v. State of Rajasthan and Others, 1980 (2) SCC 321 and Raghavendra Singh v. Superintendent, District Jail, Kanpur & Others, (1986) 1 SCC 650**, the Apex Court held that any inordinate and unexplained delay on the part of the Government, in considering the representation, renders the detention illegal.

10.16. In **Rajammal v. State of Tamil Nadu & Others, 1999 (1) SCC 417**, it has been held as follows:-

*"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest.*

10.17. In **K.M.Abdulla Kunhi v. Union of India, (1991) 1 SCC 476**, it has been held as follows:-

*".... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."*

10.18. In a recent decision, in **Ummu Sabeena Vs. State of Kerala, 2011 STPL (Web) 999 SC**, the Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22 (5) of the Constitution of India, clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

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not followed in the instant case by the respondents. Hence, the impugned order is liable to be set aside.

12. In the result, the habeas corpus petition is allowed and the impugned order is set aside. The above named detenu, Muralitharan @ Murali, who is detained in Central Prison, Palayamkottai, is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case. However, it is made clear that the present order shall not give any advantage to the detenu in any of the regular proceedings, pending before any Court.

Sd/-  
Assistant Registrar(Crl.)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government  
Prohibition and Excise Department  
Secretariate, Chennai
- 2.The District Collector-cum-District Magistrate  
Kanyakumari District.
- 3.The Superintendent,  
central Prison, Palayamkottai
- 4.The Joint Secretary to Government,  
Public (Law and Order),  
Fort St.George, Chennai-9
- 5.The Additional Public Prosecutor  
Madurai Bench of Madras High Court,Madurai.

+1cc to Mr. K.P.Narayanakumar Advocate Sr. 63722  
krk  
AA/26.02.2014/7p-7c/

H.C.P (MD) No.981 of 2013

19.12.2013