

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

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THE HONOURABLE **MR.JUSTICE R.SUDHAKAR**

and

THE HONOURABLE **MR.JUSTICE P.N.PRAKASH**

H.C.P.No.1081 of 2015

Venkatamma

.... Petitioner

vs.

1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600009.

2.District Collector and District Magistrate.
Krishnagiri District, Krishnagiri

....Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in connection with the order of Detention passed by the second respondent 08.04.2015 in S.C.No.23/2015 against the petitioner son Murugesh, Male aged 28 years, S/o Ramappa, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For petitioner	: Mr.S.Senthilvel
For RR1 & 2	: Mr.R.Maharaja,APP

ORDER

(Order of the Court was made by R.SUDHAKAR, J.)

The Petitioner, who is the mother of the detenu herein has filed this Petition challenging the order of detention passed by the 2nd respondent in S.C.No.23 of 2015 dated 08.04.2015, branding him as a "Sand Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamilnadu Act 14 of 1982].

2.Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu, dated 19.05.2015. According to the learned counsel for the petitioner, the representation, dated 19.05.2015, has been received by the Government on 21.05.2015 and remarks have been called for from the detaining authority on 21.05.2015; but, the remarks have been received by the Government only on 20.06.2015, after a delay of twenty two days (excluding Saturdays and Sundays). He adds that the file was dealt with by the Minister concerned on 27.07.2015, after a delay of six days from the date of which, the Deputy Secretary has dealt

with the same and rejected on 21.05.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there are no intervening holidays except Saturdays and Sundays and the delay of twenty two days remains unexplained. He further submitted that the detenu has given another representation dated 24.07.2015, which was also rejected after an enormous delay of approximately two months. The unexplained delay in considering the representations of the detenu vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in *Rajammal vs. State of Tamil Nadu*, reported in (1999) 1 SCC 417.

3. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 25.05.2015 and that was forwarded to the Detaining Authority, calling for remarks on 27.05.2015 and remarks were received by the Sponsoring Authority on 10.06.2015 and the report sent to the Government on 11.07.2015, ultimately, the representation was considered and rejected on 29.07.2015 and the result of the consideration was communicated to the detenu on 31.07.2015. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

4. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5. As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 19.05.2015, which was received by the Government on 21.05.2015, remarks have been called for from the detaining authority on the same day. But, remarks have been received by the Government on 20.06.2015, i.e., after a delay of twenty two days and the case of the detenu was dealt with by the Minister only on 27.07.2015 and rejected on 28.07.2015. From the above, it is clear that in between **21.05.2015 and 20.06.2015**, [i.e., the intermittent days between the representation received and the remarks received] there is a delay of **30 days**; in between **20.06.2015 and 21.07.2015**, [i.e., the intermittent days between the remarks received and the file being dealt with by the Deputy Secretary], there is a delay of **30 days**; in between **21.07.2015 and 27.07.2015**, [i.e., the intermittent days between the file being dealt with by the Deputy Secretary and the Minister concerned], there is a further delay of **6 days**. Even if we give concession to the twenty one intervening holidays including Government holidays, namely 23.05.2015, 24.05.2015, 30.05.2015, 31.05.2015, 06.06.2015, 07.06.2015, 13.06.2015, 14.06.2015, 20.06.2015, 21.06.2015, 21.06.2015, 27.06.2015,

28.06.2015, 04.07.2015, 05.07.2015, 11.07.2015, 12.07.2015, 18.07.2015, 19.07.2015, 25.07.2015 and 26.07.2015, still there is a delay of forty five days, which remain unexplained. It is also seen that the subsequent representation given by the detenu also rejected by the Government after an enormous delay, which also remain unexplained.

6.It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the delay of forty five days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7.In the judgment of the Hon'ble Supreme Court in Rajammal's case (cited supra), 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."

8.As per the dictum laid down by the Supreme Court in above cited Rajammal's case, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here forty five days delay has not been properly explained at all.

9.Further, 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.

10.In the light of the above fact and law, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu.

11.Accordingly, the habeas corpus petition is allowed and the detention

order dated 08.04.2015, passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Internet:Yes

[R.S,J.]

[P.N.P, J.]

15.12.2015

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To

- 1.The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department
Fort St George, Chennai 600009.
- 2.The District Magistrate & District Collector
Krishnagiri
- 3.The Public Prosecutor, High Court, Madras.

R.SUDHAKAR,J.
AND
P.N.PRAKASH, J.

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