

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
H.C.P.No.1788 of 2015

Amulu

.. Petitioner

Vs.

1.The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department,
Secretariat, Chennai-9.

2.The District Collector
and District Magistrate,
Kancheepuram,
Kancheepuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in BCDFGISSSV No.60/2015 dated 09.07.2015 in detaining the detenu under Section 12[b] of Tamil Nadu Act 14 of 1982 as a Bootlegger and quash the same and direct the respondents to produce the detenu Kumar @ Bandu Kumar, S/o.Munusamy aged about 52 years who is detained at Central Prison, Puzhal, Chennai-66 before this Hon'ble Court and set him liberty.

For Petitioner : Mr.Y.Deva Arul Prakash

For RR1 & 2 : Mr.M.Maharaja, APP

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner herein is the wife of the detenu and she has filed this petition challenging the order of detention passed by the 2nd respondent in BCDFGISSSV No.60/2015 dated 09.07.2015, branding her husband as a "Bootlegger" 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 [Tamil Nadu 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 13.08.2015. According to the learned counsel for the petitioner, the representation, dated 13.08.2015, has been received by the Government on 18.08.2015 and remarks have been called for from the detaining authority on the next day i.e., on 19.08.2015; but, the remarks have been received by the Government only on 26.08.2015, after a delay of 7 days. He adds that though the file was dealt with by the Deputy Secretary on 26.08.2015, the said file was dealt with by the Minister concerned only on 03.09.2015, with a further delay of 8 days and the rejection letter was prepared on 04.09.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 4 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 11 days, which remains unexplained. The unexplained delay in considering the representation 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 18.08.2015 and that was forwarded to the Detaining Authority, calling for remarks on 19.08.2015 and remarks were received by the Government on 26.08.2015 and ultimately, the representation was considered and rejected on 04.09.2015 and the result of the consideration was communicated to the detenu on 05.09.2015. 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 13.08.2015, which was received by the Government on 18.08.2015 and remarks have been called for from the detaining authority on the next day, i.e., on 19.08.2015. But, remarks have been received by the Government only on 26.08.2015, i.e., after a delay of 7 days and though the case of the detenu was dealt with

by the Deputy Secretary on 26.08.2015, the Minister concerned dealt with the case of the detenu only on 03.09.2015 causing further delay of 8 days and the same was rejected on 04.09.2015. From the above, it is clear that in between 19.08.2015 and 26.08.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 7 days ; and in between 26.08.2015 and 03.09.2015, [i.e, the intermittent days between the file dealt with by the Deputy Secretary and Minister concerned], there is a further delay of 8 days. Even if we give concession to the 4 intervening holidays including Government holidays, namely 22.08.2015, 23.08.2015, 29.08.2015 and 30.08.2015, still there is a delay of 11 days, which 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 11 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 11 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 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.

sd/-
Assistant Registrar (Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

1. The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department,
Secretariat, Chennai-9.
2. The District Collector and District Magistrate,
Kancheepuram,
Kancheepuram District.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent
Central Prison, Puzhal, Chennai
5. The Joint Secretary to Government,
Public (law & order),
Fort St. George, Chennai 600 009.

+1 CC to MR.Y.Deva Arul Prakash Advocate. SR.NO.69394

H.C.P.No.1788 of 2015

CO-SUI
JD 08/01/2016