

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1844/2015

Maan @ Jegan @ Jagadeesan .. Petitioner/Detenu

vs.

1.The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department
Fort St George, Chennai 600009.

2.The District Magistrate & District Collector
Namakkal District [TN] ... Respondents/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 Maan @ Jegan @ Jagadeesan, aged 34 years, son of Sekar, detention order under the Tamil Nadu Act 14/1982 made in CMP.No.8/Goondas/2015/M1 dated 10.02.2015 on the file of the 2nd respondent herein and quash the same and consequently to direct the respondents to produce the body of the detenu Maan @ Jegan @ Jagadeesan, aged 34 years, S/o.Sekar, who has been confined in Central Prison, Salem [TN] before this Court and set him at liberty.

For petitioner : Mr.Rajendra Kannan
For RR1 & 2 : Mr.R.Maharaja,APP

O R D E R

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

The Petitioner, who is the detenu herein has filed this Petition challenging the order of detention passed by the 2nd respondent in CMP.No.8/Goondas/2015/M1 dated 10.02.2015, branding him as a "Goonda" 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 25.03.2015. According to the learned counsel for the petitioner, the representation, dated 25.03.2015, has been received by the Government on 26.03.2015 and remarks have been called for from the detaining authority on 31.03.2015 ; but, the remarks have been received by the Government only on 16.04.2015, after a delay of sixteen days. He adds that the file was dealt with by the Minister concerned on 30.04.2015, after a delay of ten days from the date of which, the Deputy Secretary has dealt with the same and rejected on 05.05.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were eleven intervening holidays including the Government holidays and even after giving concession as to the intervening holidays, still there is a delay of twenty 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 25.03.2015 and that was forwarded to the Detaining Authority, calling for remarks on 31.03.2015 and remarks were received by the Government on 16.04.2015 and ultimately, the representation was considered and rejected on 05.05.2015 and the result of the consideration was communicated to the detenu on the same day. 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 25.03.2015, which was received by the Government on 26.03.2015, remarks have been called for from the detaining authority after a delay of five days, i.e., on 31.03.2015. But, remarks have been received by the Government on 16.04.2015, i.e., after a delay of sixteen days and the case of the detenu was dealt with

by the Minister only on 30.04.2015 and rejected on 05.05.2015. From the above, it is clear that in between 26.03.2015 and 31.03.2015, [i.e., the intermittent days between the representation received and the remarks called for] there is a delay of 5 days ; in between 31.03.2015 and 16.04.2015, [i.e., the intermittent days between the remarks called for and the remarks received], there is a further delay of 16 days ; and between 20.04.2015 and 30.04.2015 [the intermittent days between the file being dealt with by the Deputy Secretary and the Minister concerned], there is a further delay of 10 days. Even if we give concession to the eleven intervening holidays including Government holidays, namely 28.03.2015, 29.03.2015, 02.04.2015, 03.04.2015, 04.04.2015, 05.04.2015, 11.04.2015, 12.04.2015, 14.04.2015, 25.04.2015 and 26.04.2015, still there is a delay of twenty 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 twenty 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 twenty 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 10.02.2015, 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.

Sd/-

Assistant Registrar (CS-II)

True Copy

Sub Assistant Registrar

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
Namakkal District [TN]
3. The Superintendent,
Central Prison,
Salem.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George,
Chennai-9.
5. The Public Prosecutor,
High Court,
Madras.

+1cc to Mr. Rajendra Kannan, Advocate sr.67751

H.C.P.No.1844/2015

jsv[co]
srg 04/01/2016