

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1867 of 2015

Megar Banu

... Petitioner

Vs.

1. The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi 110 001.
2. The Secretary, Government of Tamil Nadu,
Co-operation, Food and Consumer
Protection Department,
Secretariat, Fort St. George,
Chennai 600 009.
3. The Commissioner of Police,
Coimbatore City,
Coimbatore.
4. The Inspector of Police,
Civil Supplies C.I.D.,
Pollachi, Coimbatore District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed by the third respondent in Proceedings C.No.07/PBMMSEC Act/IS/2015 dated 12.07.2015 and quash the same as illegal and produce the detenu namely S.Anwar @ Anwar Basha, son of Sulthan Sha, aged about 39 years, now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For petitioner : Mr.T.Lenin Kumar
For respondents : Mr.S.Arockiam,
CGSC for R1
Mr.M.Maharaja,
APP for R2 to R4

O R D E R

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

The petitioner, who is the mother of the detenu S.Anwar @ Anwar Basha, son of Sulthan Sha, aged about 39 years, has filed this petition challenging the order of detention passed by the 3rd respondent in C.No.07/PBMMSEC Act/IS/2015 dated 12.07.2015, branding the detenu as a "Black Marketeer" under 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 [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 25.07.2015 and 29.07.2015. According to the learned counsel for the petitioner, the representation dated 25.07.2015 and 29.07.2015, has been received by the Government on 28.07.2015 and 31.07.2015; the remarks were called on 31.07.2015 and 05.08.2015. But the said remarks were received only on 11.08.2015 and 14.08.2015, after a delay of seven days. He adds that though the file was submitted to the Under Secretary on 21.08.2015, the Minster has dealt with the said file of the detenu only on 27.08.2015, with a further delay of six days and the rejection letter was sent to the detenu only on 31.08.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were four intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of seven 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 28.07.2015 & 31.07.2015 and that was forwarded to the Detaining Authority, calling for remarks on 31.07.2015 & 05.08.2015 and remarks were received by the Government on 11.08.2015 & 14.08.2015 and ultimately, the representation was considered and rejected on 27.08.2015 and the result of the consideration was communicated to the detenu on 31.08.2015. 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, representation of the detenu, dated 25.07.2015 & 29.07.2015, were received by the Government on 28.07.2015 and 31.07.2015 and remarks have been called for from the detaining authority on 31.07.2015 and 05.08.2015. But, remarks have been received by the Government only on 11.08.2015 and 14.08.2015 and the case of the detenu was dealt with by the Minister only on 27.08.2015, i.e., after a delay of sixteen & thirteen days respectively and thereafter, the representation have been considered by the authorities concerned and rejected on 27.08.2015. From the above said representation dated 25.07.2015, namely the 1st representation given by the detenu, it is clear that in between 31.07.2015 and 11.08.2015, there is a delay of eleven days. Even if we give concession to the four intervening holidays, namely 01.08.2015, 02.08.2015, 08.08.2015 and 09.08.2015, still there is a delay of seven 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 seven 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 seven 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 in C.No.07/PBMMSEC Act/IS/2015 dated 12.07.2015, passed by the 3rd 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 VI)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
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2. The Secretary, Government of Tamil Nadu,
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Protection Department,
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Chennai 600 009.
3. The Commissioner of Police,
Coimbatore City, Coimbatore.
4. The Inspector of Police,
Civil Supplies C.I.D.,
Pollachi, Coimbatore District.
5. The Superintendent,
Central Prison, Coimbatore.
(In duplicate for Communication to Detenu)
6. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
7. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Lenin Kumar, Advocate, S.R.No.58217
+1cc to Mr.S.Arockiam, Advocate, S.R.No.58262

SAI (CO)
CA(20/11/2015)

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