

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1932/2015

G.Meena

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Petitioner

Vs

1.The Commissioner of Police
Chennai Police, The O/o.The
Commissioner of Police
Vepery, Chennai 600 007.

2.The Government of Tamilnadu,
Rep by its Secretary to Government
Home, Prohibition & Excise Dept.,
Fort St George, Chennai 600 009.

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Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the 1st respondent culminating with the order of detention bearing BCDFGISSSV No.568/2015 dated 17.07.2015 passed by the 1st respondent herein detaining petitioner's son Thiru Senthil Kumar, son of Gajapathy, u/s. Act XIV of 1982 and quash the same and direct the respondents to produce the body of the person of the detenu Thiru Senthil Kumar, son of Gajapathy, male, aged about 29 years, before this Court now detained in the Central Prison, Puzhal, Chennai and thereby set him at liberty.

For Petitioner : Mr.R.Udaya Kumar

For Respondents : Mr.M.Maharaja, APP

ORDER

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

Challenge is made to the order of detention passed by the 1st respondent vide Proceedings in Memo No.568/2015 dated 17.07.2015, whereby the son of the petitioner by name Senthil Kumar, son of Gajapathy, aged 29 years was ordered to be detained under the provisions 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 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

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. According to the learned counsel for the petitioner, the representation of the detenu dated 19.08.2015 has been received by the Government on 26.08.2015 and remarks have been called for from the detaining authority on the same day, ie., 26.08.2015; but, the remarks have been received by the Government only on 01.10.2015, after a delay of 36 days. He adds that the file was dealt with by the Minister concerned only on 15.10.2015 though the Deputy Secretary dealt with the same as early as on 01.10.2015 itself causing a further delay of 14 days and the rejection letter was prepared and communicated to the detenu on 20.10.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 17 intervening holidays including Government Holidays and even after giving concession as to the intervening holidays, still there is a delay of 33 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 26.08.2015 and that was forwarded to the Detaining Authority, calling for remarks on the same day and remarks were received by the Government on 01.10.2015 and ultimately, the representation was considered and rejected on 16.10.2015 and the result of the consideration was communicated to the detenu on 20.10.2015. 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 19.08.2015 was received by the Government on 26.08.2015 and remarks have been called for from the detaining authority on 26.08.2015. But, remarks have been received by the Government

only on 01.10.2015, i.e., after a delay of 36 days and the case of the detenu was dealt with by the Minister concerned on 15.10.2015 after a delay of 14 days from the date of the dealing of the file by the Deputy Secretary concerned and the same was rejected on 16.10.2015. From the above, it is clear that in between 26.08.2015 and 01.10.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 36 days and in between 01.10.2015 and 15.10.2015 [i.e., the intermittent days between the file dealt with by the Deputy Secretary and the Minister concerned] there is a further delay of 14 days. Even if we give concession to the 17 intervening holidays including Government holidays, namely 29.08.2015, 30.08.2015, 05.09.2015, 06.09.2015, 12.09.2015, 13.09.2015, 17.09.2015, 19.09.2015, 20.09.2015, 24.09.2015, 26.09.2015, 27.09.2015, 02.10.2015, 03.10.2015, 04.10.2015, 10.10.2015 and 11.10.2015, still there is a delay of 33 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 33 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 33 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 17.07.2015, passed by the 1st respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

12. At this juncture, learned Additional Public Prosecutor submitted that the investigation in Cr.No.1179/2015 has been completed and final report has been filed and the case has been committed to the Court of Sessions in PRC No.42/2015 on the file of the learned Judicial Magistrate, Alandur and that the learned Magistrate has not been able to complete the committal proceedings in view of the fact that one of the accused by name Bala @ Balakrishnan is absconding and that if the detenu's detention order is quashed, he would also resort to the same dilatory tactics and would delay the trial proceedings. It is further submitted that the next date of hearing is on 04.01.2016.

13. Considering the submissions made by the learned Additional Public Prosecutor, this Court directs the detenu Senthil Kumar to file an affidavit before the Committal Magistrate, on being released on bail by the regular Court, that he will not abscond and that he will appear and participate in the trial proceedings. On failure to comply with the above direction of this Court by the detenu, the learned Magistrate/Trial Court is entitled to take appropriate action against the detenu in accordance with law as if the conditions have been imposed and the detenu released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Police
Chennai Police, The O/o.The
Commissioner of Police
Vepery, Chennai 600 007.

2.The Secretary to Government
Government of Tamilnadu
Home, Prohibition & Excise Dept.,
Fort St George, Chennai 600 009.

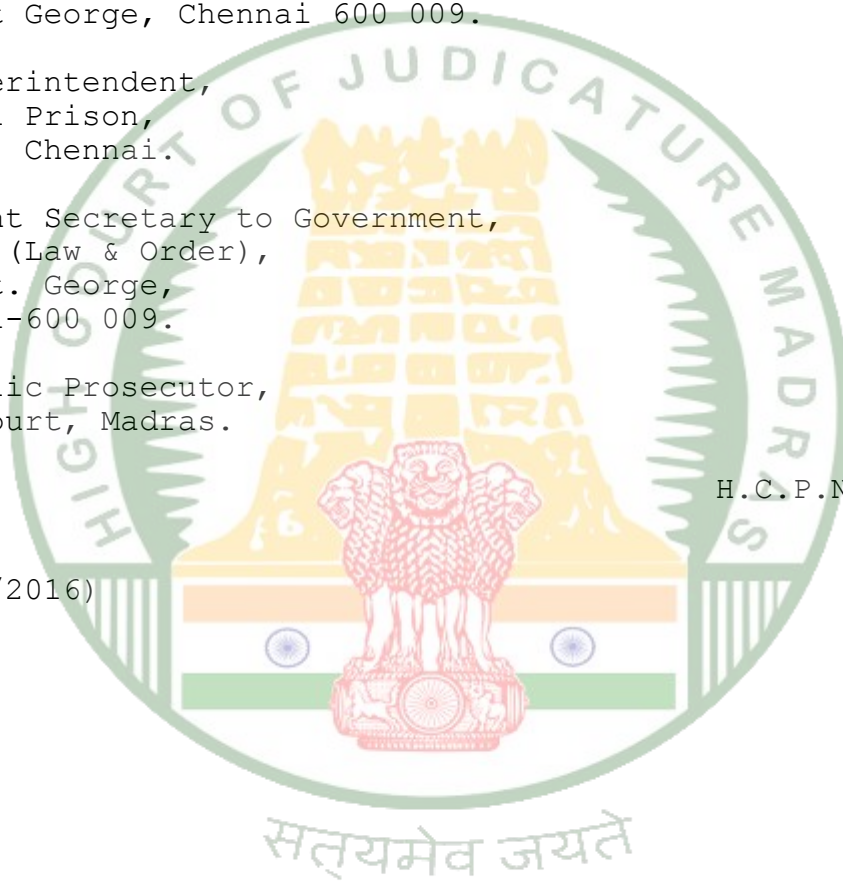
3.The superintendent,
Central Prison,
Puzhal, Chennai.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai-600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1932/2015

bvr (CO)
srg (19/01/2016)



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