

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.2100 of 2015

Saritha

... Petitioner

Vs.

1. The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department
Fort St George, Chennai 600009.
2. The District Collector
O/o.The District Collector & District
Revenue & District Magistrate,
Vellore, Vellore 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 C3.D.O.No.55/2015 dated 08.06.2015, in detaining the detenu under 2[b] of the Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu Mohan, son of Settu, Male, aged about 35 years, who is detained at Central Prison, Vellore, before this Court and set him at liberty.

For petitioner : Mr.Kubera Pandiyan

For RR1 & 2 : Mr.R.Maharaja,
Additional Public Prosecutor

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

The Petitioner, who is the wife of the detenu herein, viz., Mohan, son of Settu, aged 35 years, has filed this Petition challenging the order of detention passed by the 2nd respondent in C3.D.O.No.55/2015 dated 08.06.2015, branding her husband 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 08.06.2015. According to the learned counsel for the petitioner, the representation, dated 08.06.2015, has been received by the Government on 25.08.2015 and remarks have been called for from the detaining authority on the same day, i.e., 25.08.2015 ; but, the remarks have been received by the Government only on 02.09.2015, after a delay of eight days. He adds that the file was dealt with by the Minister concerned on 14.09.2015, after a delay of ten days from the date of which, the Deputy Secretary has dealt with the same and rejected on 15.09.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were six intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of twelve 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 08.06.2015 and that was forwarded to the Detaining Authority, calling for remarks on 25.08.2015 and remarks were received by the Government on 02.09.2015 and ultimately, the representation was considered and rejected on 15.09.2015 and the result of the consideration was communicated to the detenu on 18.09.2015

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 08.06.2015, which was received by the Government on 25.08.2015, though the remarks have been called for from the detaining authority on the same day itself, the said remarks have been received by the Government only on 02.09.2015, i.e., after a delay of eight days and the case of the detenu was dealt with by the Minister only on 14.09.2015 and rejected on 15.09.2015. From the above, it is clear that in between 25.08.2015 and 02.09.2015, [i.e., the intermittent days between the remarks called for and the remarks received], there is a delay of 8 days ; and between 04.09.2015 and 14.09.2015 [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 six intervening holidays, namely 29.09.2015, 30.08.2015, 05.09.2015, 06.09.2015, 12.09.2015 and 13.09.2015, still there is a delay of twelve 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 thirteen 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 twelve 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 08.06.2015, 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 IV)

//True Copy//

Sub Assistant Registrar

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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 Collector
O/o.The District Collector & District
Revenue & District Magistrate,
Vellore, Vellore District.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison, Vellore.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.Kubera Pandiyan, Advocate, S.R.No.67372

H.C.P.No.2100 of 2015

MP (CO)
CA(04/01/2016)



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