

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.2754 of 2015

Selvi

... Petitioner

Vs.

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

2. The Commissioner of Police,
Salem City.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to produce the body of the petitioner's husband namely Karthick, S/o.Ganesan, aged about 22 years, who is detained in Central Prison, Salem, before this Hon'ble Court and set him at liberty forthwith by calling for the records pursuant to the Detention Order made in CMP.No.49/Goonda/Salem City/2015 dated 29.05.2015 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.R.Nalliyappan

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

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

The petitioner herein is the wife of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent in CMP.No.49/Goonda/Salem City/2015 dated 29.05.2015, 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 [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 29.06.2015. According to the learned counsel for the petitioner, the representation, dated 29.06.2015, has been received by the Government on 02.07.2015 and remarks have been called for from the detaining authority on the same day; but, the remarks have been received by the Government only on 10.07.2015, after a delay of 8 days. He adds that the file was dealt with by the Minister concerned on 21.07.2015 with a further delay of six days, from the date on which the Deputy Secretary has dealt with the same on 15.07.2015 and the rejection letter was prepared on 22.07.2015. 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 10 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 29.06.2015 and that was forwarded to the Detaining Authority, calling for remarks on 02.07.2015 and remarks were received by the Government only on 10.07.2015 and ultimately, the representation was considered and rejected on 22.07.2015 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 29.06.2015, which was received by the Government on 02.07.2015 and remarks have been called for from the detaining authority on the same day itself. But, remarks have been received by the Government only on 10.07.2015, i.e., after a delay of 8 days and though the case of the detenu was dealt with by the Deputy Secretary on 15.07.2015, the Minister has dealt with the same only on 21.07.2015 with a further delay of six days and thereafter, the same was rejected on 22.07.2015. From the above, it is clear that in between 02.07.2015 and 10.07.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 8 days; and in between 15.07.2015 and 21.07.2015, [i.e., the intermittent days between the file dealt with by the Deputy Secretary and the Minister concerned], there is a further delay of 6 days. Even if we give concession to the 4 intervening holidays including Government holidays, namely 04.07.2015, 05.07.2015, 18.07.2015 and 19.07.2015, still there is a delay of 10 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 10 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 10 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 29.05.2015, 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 III)

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Sub Assistant Registrar

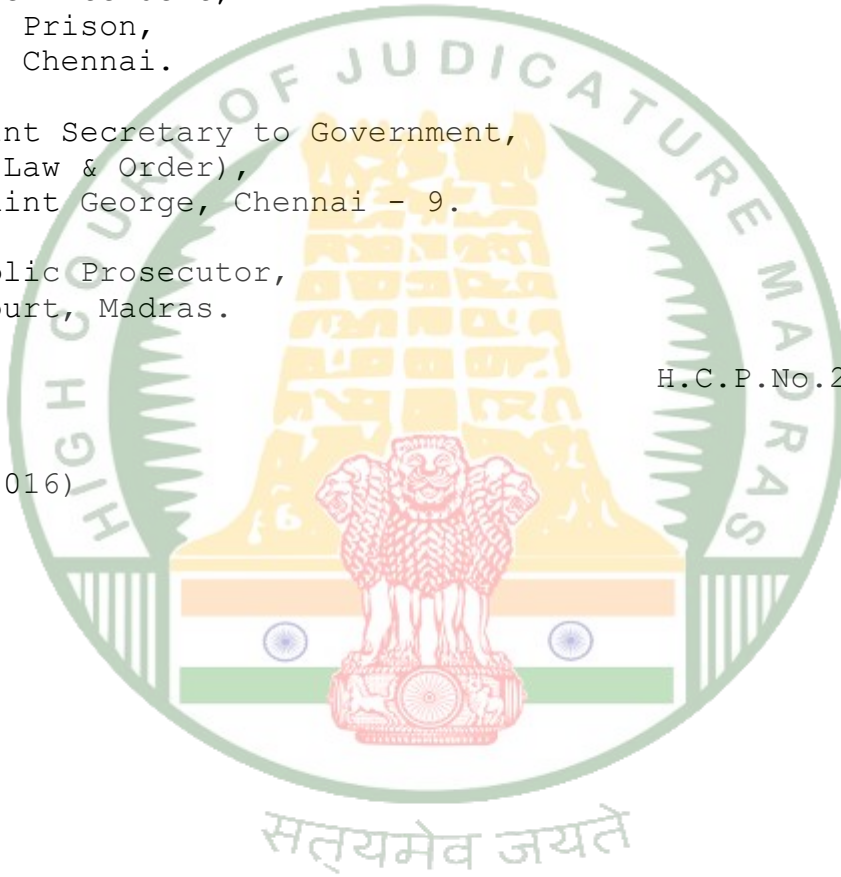
AP/gya

To

1. The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department
Fort St George, Chennai-9.
2. The Commissioner of Police,
Salem City.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2754 of 2015

GJ(CO)
CA(18/01/2016)



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