

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.514 of 2015

Reyas Mohamed,
COFEPOSA Detenu
S/o.Haja Najimudeen

... Petitioner

vs.

1.The Principal Secretary to
Govt. of Tamilnadu
(Public) (S.C) (L&O) Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

2.The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
(COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhavan, 'B' Wing,
6th Floor, Janpath,
New Delhi - 110 001.

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

... 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 letter Public (S.C) Department G.O.No.SR.1/249-3/2014 dated 05.01.2015 passed by first respondent herein and quash the same and direct the respondents to produce the body of the person of the detenu namely Reyas Mohamed, son of Haja Najamudeen, aged about 28 years, before this Court now detained under Section 3(1)(i) of the COFEPOSA Act in the Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner : Mr.A.K.S.Thahir

For Respondents: Mr.S.Shanmugavelayutham,
learned Public Prosecutor,
assisted by Mr.M.Maharaja
Additional Public Prosecutor [R1 & R3]
Mr.M.Arvindkumar,
Senior Central Govt. Panel Counsel [R2]

O R D E R

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

Petitioner/detenu S/o.Haja Najimudeen, aged 28 years, has filed this petition challenging the order of detention passed by the first respondent in G.O.No.SR.I/249-3/2014 dated 05.01.2015, detaining him under Section 3(1)(i) of the COFEPOSA Act.

2. Heard Mr.A.K.S.Thahir, learned counsel for petitioner, Mr.S.Shanmugavelayuthan, learned Public Prosecutor, appearing for respondents 1 and 3 and Mr.M.Arvindkumar, learned Senior Central Government Panel Counsel, appearing for second respondent.

3. Amidst several grounds, learned counsel for petitioner contended that the petitioner's representation 24.01.2015 made to the first respondent had been disposed of after much delay. The representation had been made on 24.01.2015 and the same was disposed of only on 27.02.2015. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in Rajammal vs. State of Tamil Nadu [(1999) 1 SCC 417].

4. Resisting the contention of the learned counsel for the petitioner, learned Public Prosecutor submitted that the representation was received only on 02.02.2015, forwarded to Customs (AIR) Department, Chennai, calling for remarks on 02.02.2015 and remarks were received on 16.02.2015. Thereafter, the file was sent to the concerned authorities and finally, the Government considered and rejected the petitioner's representation on 27.02.2015. Learned Public Prosecutor further submitted that there had been six intervening Government holidays. Therefore, according to learned Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

5. This Court has considered the submissions and perused the materials available on record.

6. 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."

7. 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.

8. 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.

9. We are of the view that the delay of 20 days in consideration of the petitioner's representation stands unexplained. The failure to consider the representation of the petitioner with promptitude is in violation of his fundamental rights enshrined under Articles 21 and 22(5) of the Constitution of India. On this ground alone, the impugned order of detention is liable to be set aside.

Accordingly, the habeas corpus petition is allowed and the detention order of detention passed by the first respondent in G.O.No.SR.I/249-3/2014 dated 05.01.2015, is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

WEB COPY
Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government (Home) Prohibition and Excise Department, Fort St. George, Chennai.
2. The Principal Secretary to Govt. of Tamilnadu (Public) (S.C) (L&O) Department, Secretariat, Fort St. George, Chennai - 600 009.
3. The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
(COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhavan, 'B' Wing,
6th Floor, Janpath,
New Delhi - 110 001.
4. The Section Officer, Cofeposa Section,
High Court, Madras.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Joint Secretary to Government,
Public (Law & order), Fort St. George, Chennai.
7. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.K.S. Thahir, Advocate, S.R.No.36724
+1cc to Mr.M. A. Rvind Kumar, Advocate, S.R.No.36972

KM(CO)
EU(05.08.2015)

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