

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM

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

H.C.P.No.551 of 2015

Ghouse Batcha

...Petitioner

vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
2. The Commissioner of Police,
Chennai Police,
Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 10.02.2015 in BCDFGISSSV No.134/2015 against the brother of the petitioner, detenu Musthafa, M/A 24, S/o.Mahaboob Batcha, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan

For Respondents : Mr.M.Maharaja,
Addl. Public Prosecutor

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

The Petitioner, who is the brother of the detenu, has filed this Petition challenging the order of detention passed by the second respondent in BCDFGISSSV No.134/2015 dated 10.02.2015, branding the detenu as a "Video Pirator" 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 NIL. According to the learned counsel for the petitioner, the representation, dated NIL has been received by the Government on 24.02.2015; the remarks were called on 26.02.2015. But the said remarks were received only on 18.03.2015, after a delay of 19 days. He adds that though the file was submitted on 19.03.2015, the Minister has dealt with the said file of the detenu only on 27.03.2015 and the rejection letter was sent to the detenu on 30.03.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 6 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 13 days in considering the representation, 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 24.02.2015 and that was forwarded to the Detaining Authority, calling for remarks on 26.02.2015 itself and remarks were received by the Government on 19.03.2015 and ultimately, the representation was considered and rejected on 27.03.2015 and the result of the consideration was communicated to the detenu on 30.03.2015. 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 citations 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 NIL which was received by the Government on 24.02.2015, remarks have been called for from the detaining authority on 26.02.2015. But, remarks have been received by the Government only on 18.03.2015 and the case of the detenu was dealt with by the Minister only on 27.03.2015 and thereafter, the representation has been considered by the authorities concerned and rejected on 30.03.2015. From the above, it is clear that in between 26.02.2015 and 18.03.2015, there is a delay of 19 days. Even if we give concession to the 6 intervening holidays, namely 28.02.2015, 01.03.2015, 07.03.2015, 08.03.2015, 14.03.2015 and 15.03.2015 respectively, still there is a delay of 13 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 13 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 13 days delay has not been properly explained at all.

9.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 the inordinate delay from 26.02.2015 to 19.03.2015, has not been properly explained at all.

10.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.

11.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.

12.Accordingly, the habeas corpus petition is allowed and the detention order dated 10.02.2015, passed by the second 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(AD-I)

//True Copy//

Sub Assistant Registrar

mmi

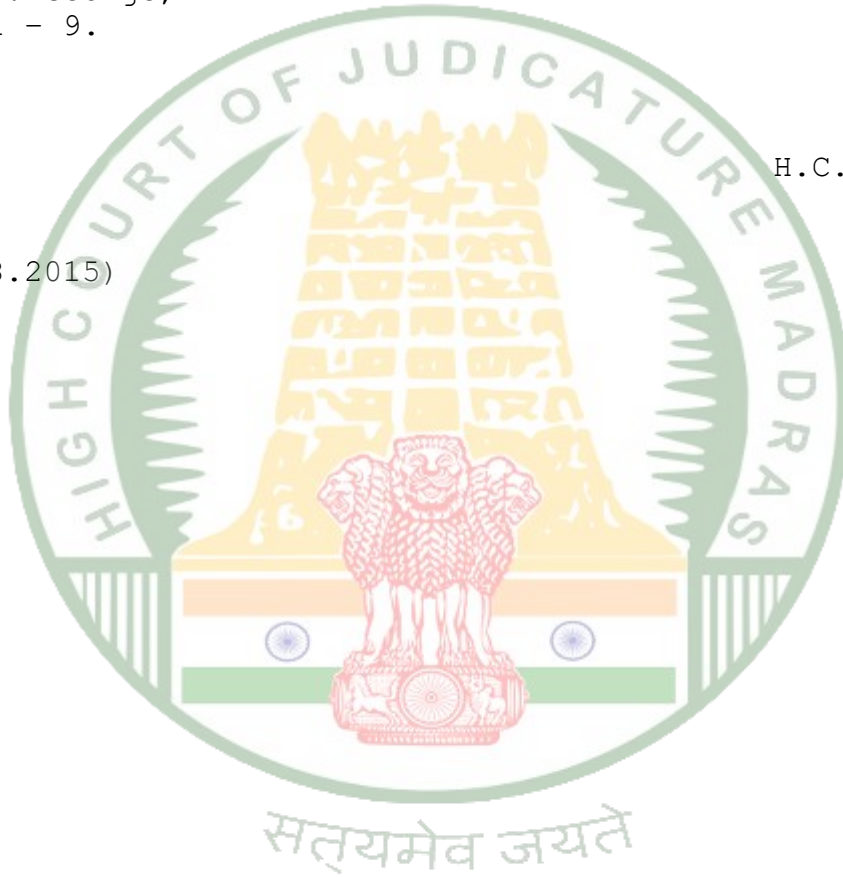
To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
2. The Commissioner of Police,
Chennai Police, Chennai.

3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court,
Madras.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George,
Chennai - 9.

H.C.P.No.551 of 2015

CA (CO)
PSI (20.08.2015)



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