

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

HCP.No.2411 of 2014

M.Kamalkhan

..Petitioner

Vs

1.The Secretary to Government
Home, Prohibition & Excise Department,
Chennai 600009.

2.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

..Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records in connection with the order of detention passed by the second respondent dated 24.08.2014 in B.D.F.G.I.S.S.V.No.70/2014 against the petitioner's son, Nivas @ Nivaskhan, male, aged 24 years, S/o Kamalkhan, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner :Mr.D.Balaji

For Respondents :Mr.C.Emalias, Addl. Public Prosecutor

ORDER

This Habeas Corpus Petition is filed, by the father of the detenu, namely, Nivas @ Nivaskhan, aged 24 years, son of Kamalkhan, to issue a Writ of Habeas Corpus, to call for the records in BDFGISSV No.70/2014, dated 24.08.2014, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) 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 14/1982), branding him as a "Goonda, in the Central Prison, Vellore, and to quash the same and to direct the Respondents to produce the body and person of the detenu and set him at liberty forthwith.

2. Even though Mr.D.Balaji, the learned counsel for the petitioner raised many grounds, in assailing the impugned order of detention, he confined his arguments only on the ground that there is unexplained delay in considering and disposing of the

representation of the detenu, which would vitiate the impugned detention order.

3. According to the learned counsel for the petitioner, the representation, dated 01.09.2014, has been received by the Government on 08.09.2014 and remarks were called for on 09.09.2014. But, the remarks were received only on 12.09.2014, after a delay of 2 days. The learned counsel further submitted that though the file was dealt with by the Under Secretary and the Deputy Secretary on 12.09.2014, the Minister has dealt with the said file of the detenu only on 23.09.2014 and the rejection letter was prepared on 24.09.2014, with a further delay of 10 days. 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 8 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.

4. Per contra, Mr.C.Emalias, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. The learned Additional Public Prosecutor would further submit that there was no deliberate delay on the part of the authorities concerned to consider and dispose of the representation of the detenu. It is contended that such a delay is not fatal to the impugned detention order, as the authorities concerned are dealing with the file right from the date of receipt of the representation.

5. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and also perused the impugned order of detention and the materials placed on record.

6. As per the proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu dated 01.09.2014, which was received by the Government on 08.09.2014, remarks have been called for from the Detaining Authority on 09.09.2014. But, the remarks have been received by the Government only on 12.09.2014, after a delay of 2 days. Thereafter, though the case was dealt with by the Under Secretary and Deputy Secretary on 12.09.2014, the Minister has dealt with the same only on 23.09.2014, after a delay of 10 days. The representation has been considered by the authorities concerned and rejected on 24.09.2014. From the above it is clear that in between 08.09.2014 and 24.09.2014, there is a delay of 12 days. After giving concession to the 4 intervening holidays, namely, 13.09.2014, 14.09.2014, 20.09.2014 and 21.09.2014, still there is a delay of 8 days, which remain unexplained.

7. From the records produced, we find that no explanation has been offered for the delay of 8 days. 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.

8. At this Stage, it is relevant to refer to a few decisions of the Honourable Supreme Court and the same are extracted as follows:-

"(i) The Honourable Supreme Court in Rashid sk. v. State of West Bengal (1973-3-SCC-476), has held as follows:-

"The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion."

(ii) The Honourable Supreme Court in Ram Sukrya Mhatre v. R.D.Tyagi, 1992 Supp (3) SCC 65 held that the right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India.

(iii) In Aslam Ahmed Zaire Ahmed Shaik v. union of India and others reported in 1989 SCC (Cr1) 554 has held, thus:-

The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation 11 days after it was handed over to the jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and Constitutionally impermissible.

.....

When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5).

(iv) In *Tara Chand v. State of Rajasthan*, 1980 (2) SCC 321 and *Raghavendra Singh v. Superintendent, District Jail*, 1986 (1) SCC 650, the Honourable Supreme Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal.

(v) In yet another decision of the Honourable Supreme Court reported in 1999 (1) SCC 417 (*Rajammal v. State of Tamil Nadu*), it is held that 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. But that does not mean that the authority is preempted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to the permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister

was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.

(vi) In K.M.Abdulla Kunni v. Union of India, 1991 (1) SCC 476, it is held as follows:-

"That part, it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

9. The right to make a representation, against an order of detention is not only a constitutional right, but also a statutory right as well. Since the Constitution as also the Act, specifically, provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is a corresponding duty on the authorities, to whom the representation is made, to dispose of the representation, at the earliest or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lost both its purpose and meaning. The court, in a large number of cases, has already laid down the principle in clear and specific terms that the representation has to be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the court or else the unexplained delay or unsatisfactory explanation in the disposal of the representation would totally affect the order of detention and in that situation, continued detention would become bad.

10. This Court has repeatedly held that even the unexplained delay of three days is construed to be fatal to the detention order in the decision reported in 2007-2-MWN-Cr.-145-DB (Sumaiya vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamil Nadu, Fort St. George, Chennai-9 and another). This court has also held that the unexplained delay in the disposal of the representation would definitely amount to breach of the constitutional imperative and the same would render a continued detention impermissible and illegal. It is well settled that there should not be supine indifference, slackness or callous attitude in considering the representation. In the decisions cited supra, the unexplained delay of even three days is held to have

vitiated the order of detention.

11. In so far as the case on hand is concerned, we have already pointed out that there is, totally, unexplained delay of 11 days in considering and disposing of the representation of the detenu and as such, the same would vitiate the impugned order of detention. It is needless to say that the guarantee of earliest disposal of the representation set out in Article 22(5) of the Constitution of India has been infringed. Therefore, in the light of the above said principles laid down by the Honourable Supreme Court and this Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To:

1. The Secretary to Government
Home, Prohibition & Excise Department,
Chennai 600009.
2. The District Collector & District Magistrate,
Kancheepuram District, Kancheepuram.
- 3.
- 4.3. The Superintendent Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & order) Fort St. George Chennai-9
5. The Public Prosecutor,
High Court, Madras.

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H.C.P.No.2411 of 2014