

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.3528/2014

Anitha

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Petitioner

vs.

1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police/Detaining Authority,
O/o.The Commissioner of Police
Coimbatore City, Coimbatore.

3.The Additional Secretary
Government of India, Ministry of
Consumer Affairs, Food and Public
Distribution, [Dept. of Consumer Affairs]
Room No.270, Krishi Bhawan,
New Delhi 110001.

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Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records relating to the petitioner's husband detention under the Tamil Nadu Act 14 of 1982 vide detention order dated 25.11.2014 on the file of the 2nd respondent herein made in proceedings Memo C.No.08/PBMMSEC Act/IS/2014, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Mohan @ Vellalur Mohan @ Mohankumar, son of Chinnu, aged 38 years before this Court and set the petitioner's husband at liberty from detention now the petitioner's husband detained at Central Prison, Coimbatore.

For petitioner : Mr.K.R.Ramesh

For RR1 & 2 : Mr.M.Maharaja,APP

For R3 : M/s.Meenakumari, SCGSC

O R D E R

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

The Petitioner, who is the husband of the detainee, has filed this Petition challenging the order of detention passed by the 2nd respondent in Memo C.No.08/PBMMSEC Act/IS/2014 dated 25.11.2014, branding the detainee as a "Black Marketeer" under the Tamil Nadu Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Act 7 of 1980].

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 detainee, dated 01.12.2014. According to the learned counsel for the petitioner, the representation, dated 01.12.2014 has been received by the Government on 03.12.2014 ; the remarks were called on 05.12.2014. But the said remarks were received only on 17.12.2014, after a delay of 12 days. He adds that though the file was submitted to the Under Secretary on the next day, i.e., on 18.12.2014, the Minister has dealt with the said file of the detainee only on 23.12.2014 and the rejection letter though prepared on 23.12.2014, was sent to the detainee only on 26.12.2014. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were four 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 detainee 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 03.12.2014 and that was forwarded to the Detaining Authority, calling for remarks on 05.12.2014 itself and remarks were received by the Government on 17.12.2014 and ultimately, the representation was considered and rejected on 23.12.2014 and the result of the consideration was communicated to the detainee on 26.12.2014. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detainee 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 detainee, dated 01.12.2014 which was received by the Government on 03.12.2014, remarks have been called for from the detaining authority on the same day itself, i.e., on 05.12.2014. But, remarks have been received by the Government only on 17.12.2014 and the case of the detainee was dealt with by the Minister only on 23.12.2014, i.e., after a delay of twelve days and thereafter, the representation has been considered by the authorities concerned and rejected on 23.12.2014. From the above, it is clear that in between 05.12.2014 and 17.12.2014, there is a delay of twelve days. Even if we give concession to the four intervening holidays, namely 06.12.2014, 07.12.2014, 13.12.2014 and 14.12.2014, still there is a delay of 8 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 8 days. Therefore, we have to hold that the delay has vitiated further detention of the detainee.

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 detainee 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 eight 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 20.05.2014 to 13.03.2014, 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 detainee, 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 detainee.

12.Accordingly, the habeas corpus petition is allowed and the detention order passed by the 2nd respondent is quashed. The detainee is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

AP

To

1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police/Detaining Authority,
O/o.The Commissioner of Police
Coimbatore City, Coimbatore.

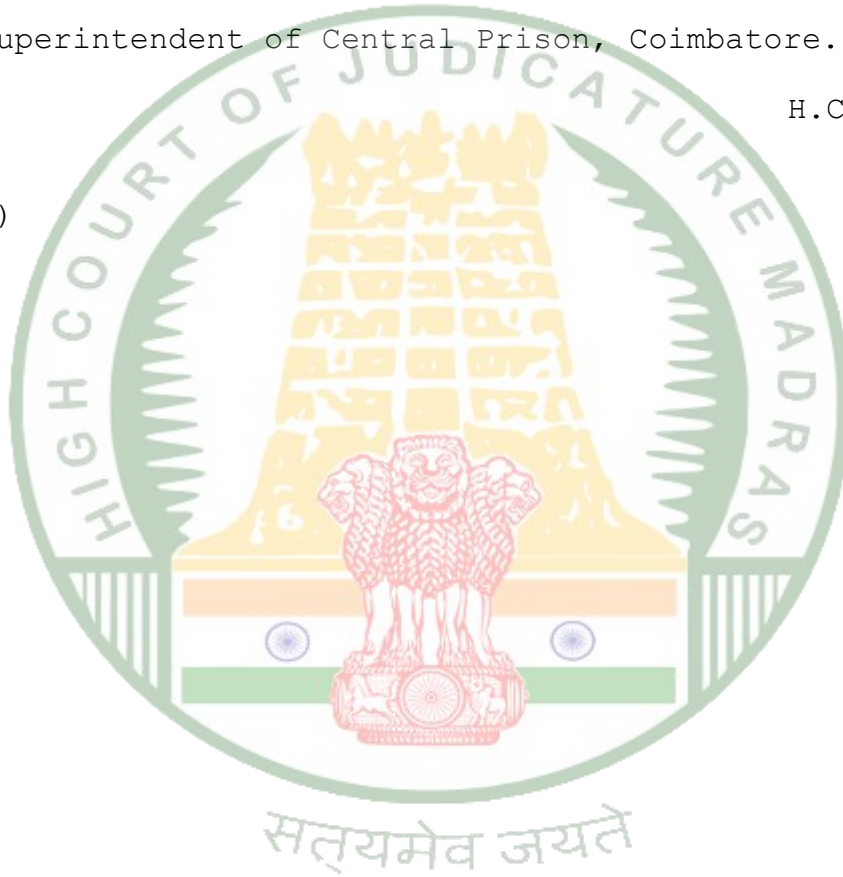
3.The Additional Secretary
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Room No.270, Krishi Bhawan,
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4.The Public Prosecutor, High Court, Madras.

5.The Superintendent of Central Prison, Coimbatore.

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