



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 5.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.288 of 2015

Esakkiammal

.. Petitioner

Vs.

1.State of Tamil Nadu,
rep. by the Secretary to Government,
Home, Prohibition and Excise
Department,
Fort St.George,
Chennai-600 009.

2.The District Collector and
District Magistrate,
Kanyakumari District,
Nagercoil.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records of detention order passed in PD.No.05/2015 dated 11.2.2015 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband, namely, Selvakumar @ Kuluvan Selvakumar @ Siva, son of Sankaran, aged about 31 years before this Hon'ble Court and set him at liberty.

For petitioner

: M/s.K.Sudalaiyandi

For respondents

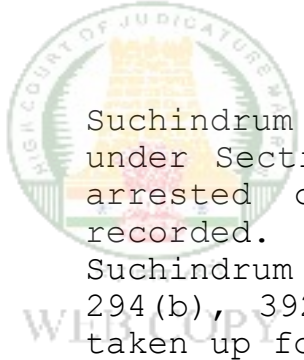
: Mr. T.Mohan

Additional Public Prosecutor

O R D E R

The petitioner is the wife of the detenu, namely, Selvakumar @ Kuluvan Selvakumar @ Siva. The said detenu has been branded as 'Goonda' in detention order passed in P.D.No.05/2015 dated 11.2.2015, by the second respondent. The petitioner has sought for a Writ of Habeas Corpus Petition.

2. The detenu has come to the adverse notice in cases in Crime No.01/2007 under Section 392 IPC on 5.1.2007 of Eathamozhy Police Station and Crime No.214/2010 under Sections 457, 380 r/w 511 IPC on 8.6.2010 of the Anjugramam Police Station and Crime No.219/2010 under Sections 457, 380 r/w 511 IPC of the Anjugramam Police Station and Crime No.398/2012 under Section 392 IPC of the



Suchindrum Police Station and in granded case in Crime No.42/2015 under Sections 341, 294(b), 392, 506(ii) IPC. The detenu has been arrested on 24.01.2015 and his confession statement has been recorded. On the complaint of Thiru.Rajan, a ground case in Suchindrum Police Station in Crime No.42/2015 under Sections 341, 294(b), 392 and 506(ii) IPC has been registered on 24.1.2015 and taken up for investigation.

3. Challenging the said impugned order, the learned counsel for the petitioner has raised many contentions. The pertinent point raised by the learned counsel for the petitioner is that there has been a delay in consideration of representation made on behalf of the petitioner.

4. On a perusal of the performa produced by the learned Additinal Public Prosecutor, this Court finds that the representation dated 2.3.2015 has been received by the Government on 6.3.2015 and remarks have been called for, from the Detaining Authority on 9.3.2015. However, the remarks have been received by the Government only on 25.3.2015. In between 9.3.2015 and 25.3.2015, there are clear twelve working days, delay has been made. Again, the Minister for Electricity, Prohibition and Excise, dealt with the file on 30.03.2015, through the Deputy Secretary dealt with the file on 26.03.2015 itself. Hence, there are two clear working days, delay has been again made. Accordingly, there is the said delay in considering the representation during the relevant period at two stages which have not been properly explained.

5. At this juncture, this Court which deems fit to consider the few decision on the aspect of delay:-

i) In *Rashid sk. Vs. State of West Bengal reported in 1973 (3) SCC 476*, the Hon'ble Supreme Court considered similar issue and held taht any unexplained delay in disposal of the representation would be breach of constitutional imperative and it would render the continued detention impermissible and illegal and accordingly the Hon'ble Supreme Court has held as follows:-

"The ultimate objective of this provisin 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) In *Icchu Devi Choraria Vs. Union of India* reported in 1980(4)SCC 531, the Apex Court has held as follows:-

"There is a constitutional obligation under Article 22(5) to consider the representation of the detenu as early as possible and if there is unreasonable and unexplained delay in considering such representation, it would have the effect of invalidating the detention of the detenu"

iii) In *Ram Sukrya Mhatre V. R.D.Tyagi*, 1992 Supp(3) SCC 65, the Hon'ble Supreme Court held thus:-

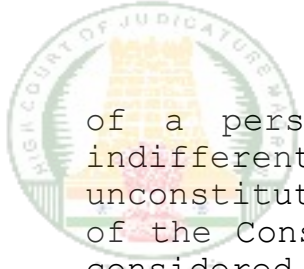
"The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India."

iv) In *G.Kalaiselvi Vs. The State of Tamil Nadu* (2007 (5) CTC 657), a Full Bench of this Court has held that it is well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making a representation and such right of the detenu, obviously, encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay, and the result of such representation should also be communicated without any such delay.

v) In *Rekha Vs. State Tamilnadu* (2011 (5) SCC 244), it has been held that the personal liberty of a person is protected, under Article 21 of the Constitution of India. As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the part of the Detaining Authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. The procedural safe guards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

vi) 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.

6. The reason for immediate consideration of the representation is too obvious to be stressed, as the personal liberty



of a person is at stake and any delay would not only be an indifferent act on the part of the Authorities, but would also be unconstitutional, violating the right enshrined under Article 22(5) of the Constitution of India of a Detenu to have his representation considered with reasonable expedition. The unexplained delay in considering the said representation would have the effect of vitiating the Detention Order. For reasons stated supra, the Detention Order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the impugned order of the second respondent in PD.No.05/2015 dated 11.2.2015, is quashed. The detenu is ordered to be set at liberty unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

vks

To:

1. Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The District Collector and
District Magistrate,
Kanyakumari District,Nagercoil.

3.The Commissioner of Police,
Kanyakumari District,Nagercoil.

4.The Superintendent, Central Prison,
Palayamkottai, (in depuplicate communication to detenu)

5.The Joint secretary to Government,
Public (Law & Order) Fort Saint George, Chennai-9

6. The Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Sudaiyandi, Advocate Sr NO.44065

ORDER MADE IN
H.C.P (MD) No.288 of 2015
5.8.2015

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