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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.292 of 2015

Prema .. Petitioner

Vs.

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Secretariat, Chennai-600 009.

2. The District Collector and District Magistrate,
   Office of the District Collector and
   District Magistrate,
   Thanjavur District, Thanjavur.

3. The Superintendent of Prison,
   Trichy Central Prison, Trichy District. .. Respondents

PRAYER:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the Respondent No.2 in P.D.No.12/2015 dated 1.3.2015 and quash the same and direct the Respondents to produce the detenu namely Kavi @ Sundara Kaveeshwarar, son of Kanagasabapathi, aged about 28 years detained in Trichy Central Prison before this Court and set him at liberty forthwith.

For petitioner : Mr.R.Alagumani

For respondents : Mr.T.Mohan
Additional Public Prosecutor

ORDER

The petitioner is the mother of the detenu, namely, Kavi @ Sundara Kaveeshwarar. The said detenu has been branded as 'Goonda' in detention order passed in P.D.No.12/2015 dated 1.3.2015, by the learned District Collector and District Magistrate, Thanjavur. The petitioner has sought for a Writ of Habeas Corpus Petition.

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2. The detenu has come to the adverse notice in four cases in Crime No.35 of 2012, 77 of 2013, 29 of 2014 and 206 of 2014. The first case has been registered in Tiruchitrambalam Police Station under Section 323 of IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act, 1998 and the second case has been registered in Crime No.77/2013 on the file of Tiruchitrambalam Police Station under Sections 452 and 307 of IPC altered into 452, 342 and 307 of IPC and the third case has been registered in Madukkur Police Station in Crime No.29 of 2014 under sections 147, 148, 364, 324 and 307 of I.P.C altered into 147, 148, 364, 324, 326 and 307 of I.P.C and fourth case has been registered in Madukkuar Police Station in Crime No.206 of 2014 under Sections 147, 341, 294(b), 506(ii), 395 and 397 of I.P.C. On the complaint of Thiru.Amoharan, a ground case has been registered in Thiruchitrambalam Police Station in Crime No.34 of 2015 under sections 294(b), 506(ii), 392 and 397 I.P.C r/w Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

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 03.03.2015 has been received by the Government on 09.03.2015 and remarks have been called for, from the Detaining Authority on 10.03.2015. However, the remarks have been received by the Government only on 23.03.2015. In between 10.03.2015 and 23.03.2015, clear nine working days, delay has been made. Again, the Minister for Electricity, Prohibition and Excise, dealt with the file only on 30.03.2015 through the Deputy Secretary has dealt with the file on 24.03.2015 itself. Hence, four 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 provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its*

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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

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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 represenation 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 P.D.No.12/2015 dated 1.3.2015, 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 (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Secretariat, Chennai-600 009.

2. The District Collector and District Magistrate,
   Office of the District Collector and District Magistrate,
   Thanjavur District, Thanjavur.

3. The Superintendent of Prison,
   Trichy Central Prison,
   Trichy District.

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4. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St. George, Chennai-9.

5. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

PMU
TE/AN-MP/SAR-I 31/08/2015 5P/6C

ORDER MADE IN
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