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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.438 OF 2015

Sarath @ Sarath Babukumar

.. Petitioner

vs.

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

2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

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 H.S.(M) Confdl. No.18/2015 dated 11.03.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Sarath @ Sarath Babukumar, Son of Chandra Mohan, aged about 24 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For petitioner

: M/s.R.Alagumani

For respondents

: Mr. T.Mohan,
Additional Public Prosecutor

O R D E R

The petitioner is the detenu, namely, Sarath @ Sarath Babukumar. The said detenu has been branded as 'Goonda' in detention order passed in H.S.(M) Confdl. No.18/2015 dated 11.03.2015, by the learned District Collector and District Magistrate, Thoothukudi District, Thoothukudi. The petitioner has sought for a Writ of Habeas Corpus Petition.

2. The detenu has come to the adverse notice in three cases in Crime No.263 of 2013, 264 of 2013 and 101 of 2014 of the police. On the complaint of Tr.Esakki, a ground case in Thoothukudi South Police Station Cr. No.111/2015, under Sections.341, 294(b),307 and 506(ii) I.P.C has been registered on 14.02.2015 at 09.30 hours against the detenu.



3. Challenging the said impugned order, the learned counsel for the petitioner has raised many contentions. The pertinent point has been 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.

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4. On a perusal of the performa produced by the learned Additional Public Prosecutor, this Court finds that the representation dated 27.03.2015 has been received by the Government on 31.03.2015 and remarks have been called for, from the Detaining Authority on 31.03.2015. However, the remarks have been received by the Government only on 10.04.2015. In between 31.03.2015 and 10.04.2015, clear five working days, delay has been made. Again, the Minister for Electricity, Prohibition and Excise, dealt with the file only on 21.04.2015 through the Deputy Secretary has dealt with the file on 13.04.2015 itself. Hence, five 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 that 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 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 *Ichchu 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.

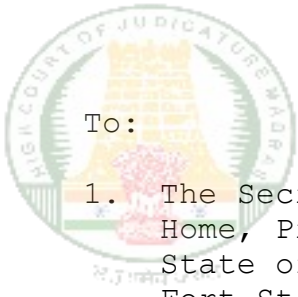
12. In the result, the Habeas Corpus Petition is allowed and the impugned order of the second respondent in H.S.(M) Confdl. No.18/2015 dated 11.03.2015, is quashed. The detenu is ordered to be set at liberty unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar



To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Secretariat,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government Public (Law & Order)
Fort St., George, Chennai-9.
5. The Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Alagumani, Advocate SR.No.43594

ORDER MADE IN
H.C.P (MD) No.438 of 2015
03.08.2015

pmu
NS/21.08.2015 : 4p/7c