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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.461 of 2015

Shanthi

.. Petitioner

Vs.

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the second respondent in Detention Order in Cr.M.P.No.4/Goonda/2015 dated 13.2.2015 and quash the same and direct the respondents to produce the body of the detenu, Kuttai Sankar @ Sankar, S/o.Sethupathy, aged about 19 years, before this Hon'ble Court and set him at liberty, now detained at Borstal School, Thanjavur.

For petitioner : M/s.S.Mahendrapathy

For respondents : Mr. T.Mohan
Additional Public Prosecutor

O R D E R

The petitioner is the mother of the detenu, namely, Kuttai Sankar @ Sankar. The said detenu has been branded as 'Goonda' in detention order passed in Cr.M.P.No.4/Goonda/2015 dated 13.2.2015, 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.326/2014 under Sections 341, 294(b), 323, 324, 506(ii) IPC on 30.5.2015 and Crime No.473/2014 under Sections 147, 148, 342, 294(b), 323, 324, 427, 506(ii) IPC and Section 4 of Women Harassment Act on 31.8.2014 of the Sivagangai Town Police Station. The detenu has been arrested on 17.01.2015 near Vaniyangud Bus Stop in Sivagangai Town PS Crime No.34 of 2015 under Section 397 I.P.C and his confession statement has been recorded. On the complaint of Alagu Prabu, a ground case in Sivagangai Town Police Station Crime No.34 of 2015, under Section 397 I.P.C has been registered 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 Additional Public Prosecutor, this Court finds that the representation dated 7.4.2015 has been received by the Government on 10.4.2015 and remarks have been called for, from the Detaining Authority on 13.4.2015. However, the remarks have been received by the Government only on 23.4.2015. In between 13.4.2015 and 23.4.2015, there are clear seven working days, delay has been made. Again, the Minister for Electricity, Prohibition and Excise, dealt with the file only on 5.5.2015 through the Deputy Secretary has dealt with the file on 7.5.2015 itself. Hence, there are seven 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 **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 No.4/2015 dated 13.2.2015, 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

/True Copy/

Sub Assistant Registrar

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



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

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

4. The Superintendent, Borstal School, Thanjavur
(In Duplicate to communicate to the detenu)

5 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai.

+1cc to M/S. S.Mahendrapathy, Advocate in SR.No 44286

TS/06.08.2015/4P - 8C /SAR -II

ORDER MADE IN
H.C.P (MD) No.461 of 2015.

5.8.2015