

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1767 of 2015

S.Vijayalakshmi

... Petitioner

Vs.

1. The Secretary, Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector & District Magistrate
Kancheepuram District at Kancheepuram. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the detaining authority to produce the detainee, the petitioner's husband Krishnamoorthy, S/o.Durai, aged about 41 years, a resident of No.16, Bharathiyar Street, Vedachala Nagar, Kancheepuram Taluk and District, who has been detained under Act 14 of 1982 after having been declared as a "Goonda" by order of the 2nd respondent's detention order dated 28.06.2015 and presently confined at the Central Prison, Vellore as TPDA No.6822 under the preventive detention order in BCDFGISSSV No.52/2015, quash the said detention, set aside the same and set the detenu at liberty.

For Petitioner : Mr.A.Shiv Kumar

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner herein is wife of the detenu, viz., Krishnamoorthy, S/o.Durai, aged about 41 years and she has filed this petition challenging the order of detention passed by the 2nd respondent in No.52/2015 dated 28.06.2015, branding her

husband as a "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

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 detenu. According to the learned counsel for the petitioner, the representation of the detenu dated 08.07.2015, though received by the Government, has not yet been considered. The inordinate unexplained delay in considering the representation of the detenu 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. Heard the submissions of the learned Additional Public Prosecutor and perused the materials available on record.

4. It is the contention of the learned counsel for the petitioner that the representation dated 08.07.2015 sent to the authorities concerned, with acknowledgment, has not been considered till date. The said contention is substantiated from the perusal of the typed set of papers, wherein the petitioner's representation dated 08.07.2015 has been sent by registered Post with Acknowledgment Due and despite receipt of such representation, it is yet to be disposed of.

5. 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 more than 5 months. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

6. 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 detenu 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."

7.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 delay of more than 5 months has not been properly explained at all.

8.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 detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

9.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 detenu.

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

Sd/-
Assistant Registrar(CCC)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

AP

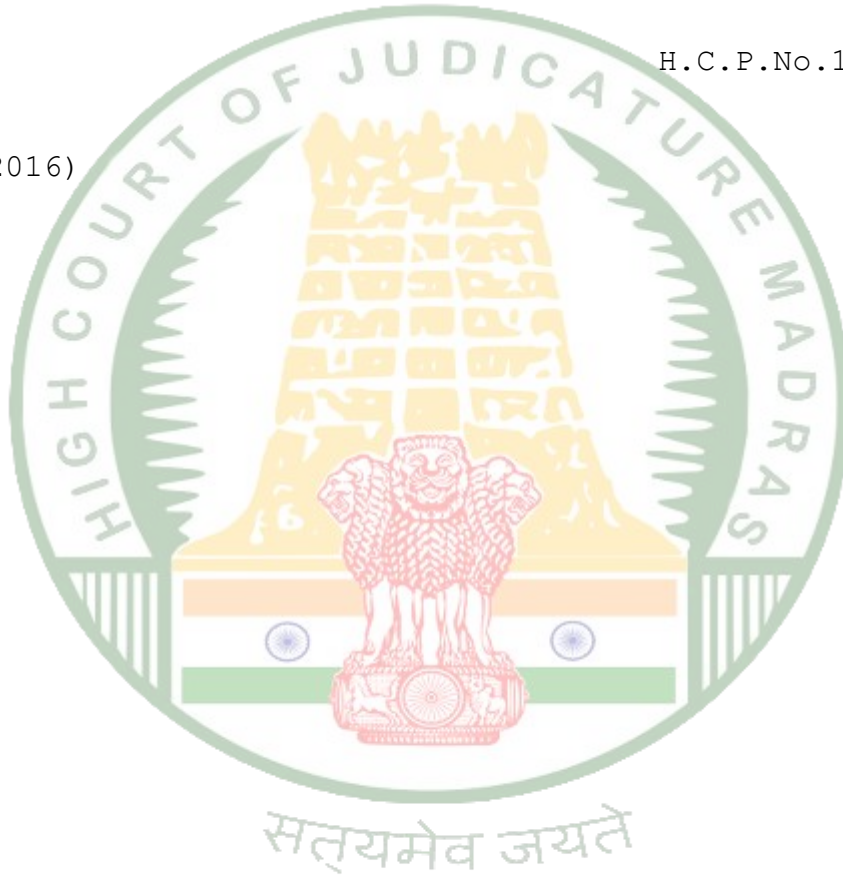
To

1. The Secretary, Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector & District Magistrate
Kancheepuram District at Kancheepuram.

3. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
4. The Superintendent,
Central Prison,
Vellore.
5. The Public Prosecutor
High Court, Madras.

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PA(CO)
CA(04/02/2016)



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