

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.2054 of 2015

Vijiya

...Petitioner

Vs.

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

2.The Commissioner of Police,
Salem City, salem

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention dated 31.07.2015 passed by the 2nd respondent in C.M.P.No.62/GOONDA/Salem City/2015, quash the same and produce the detenu, Vanjinathan, aged about 28 years, S/o.Natesan, before this Court and set him at liberty.

For Petitioner : Mr.S.Manoharan
For Respondents : Mr.M.Maharaja,
Addl.Public Prosecutor

O R D E R

[Order of the Court was made by S.NAGAMUTHU, J.]

The petitioner herein is the mother of the detenu and she has filed this petition challenging the order of detention passed by the second respondent in C.M.P.No.62/Goonda/Selam City/2015, dated 31.07.2015, branding her son as a "GOONDA" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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 5.12.2015, has been received by the Government on 15.12.2015 and remarks have been called for from the detaining authority on 16.12.2015; but, the remarks have been received by the Government only on 28.12.2015, after a delay of 12 days. He adds that the file was dealt with by the Deputy Secretary concerned on 30.12.2015, but the same was dealt with by the Minister concerned on 11.1.2016, after a delay of 12 days; rejection letter was prepared on 12.01.2016 and communicated to the detenu on the same day, i.e. on 12.01.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 11 intervening holidays and even after giving concession as to the intervening holidays including Government Holidays, still there is a delay of 12 days, which remains unexplained. The 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. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 16.12.2015 and that was forwarded to the Detaining Authority, calling for remarks, on the same date, i.e. 16.12.2015 and remarks were received by the Government on 28.12.2015 and the file was dealt with by the Deputy Secretary on 30.12.2015 and the Minister concerned dealt with the same on 11.01.2016; rejection letter was prepared on 12.1.2016 and ultimately, the representation was considered and rejected on the same day i.e. on 12.1.2016 and the result of the consideration was communicated to the detenu on 12.1.2016. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

4. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5. As per the Proforma submitted by the learned Additional Public Prosecutor, the representation of the detenu dated 05.12.2015 was received by the Government on 16.12.2015 and remarks have been called for from the detaining authority on

16.12.2015. But, remarks have been received by the Government only on 28.12.2015, i.e., after a delay of 12 days and the case of the detenu was dealt with by the Deputy Secretary concerned on 30.12.2015 and the Minister concerned dealt with the file on 11.01.2016 and the same was rejected on 12.1.2016. From the above, it is clear that in between 16.12.2015 and 28.12.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 12 days. Even if we give concession to the 6 intervening holidays including Government holidays, namely 19.12.2015, 20.12.2015, 23.12.2015, 25.12.2015 to 27.12.2015, still there is a delay of 6 days, which remain unexplained. It is also clear that in between 30.12.2015 and 11.01.2016, [i.e., the intermittent days between the Deputy Secretary dealt with the file and the Minister concerned dealt with the file] there is a delay of 12 days. Even if we give concession to the 6 intervening holidays including Government holidays, namely 1.1.2016 to 3.1.2016, 9.1.2016 and 10.1.2016, still there is a delay of 6 days, which remain unexplained.

6. 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 12 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7. 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."

8. 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 12 days delay has not been properly explained at all.

9.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.

10.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.

11.Accordingly, the habeas corpus petition is allowed and the detention order passed by the second 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/

Sub-Assistant Registrar

msk
To

- 1.The Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai-600 009
- 2.The Commissioner of Police,
Salem City, Salem.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Superintendent
Central Prison, Salem
- 5.The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.

H.C.P.No.2054 of 2015

CO-KGK
JD 15/02/2016