

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.2.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2086 of 2015

Suriya

... Petitioner

Vs.

1. The State of Tamil Nadu
rep by its Secretary to the Government
Home Prohibition & Excise Department
Fort St. George,
Chennai - 600 009
2. The Commissioner of Police
Chennai Police
Vepery, Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the entire records leading to the detention of the petitioner's brother Kesavan s/o. Siva male aged about 24 years is presently lodged in Central Prison Puzhal at Chennai and has been detained under Act 14/82 as a Goonda vide detention order dated 7.8.2015 on the file of the second respondent herein made in Memo No.702/BDFGISSSV/2015 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Raja Velu

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor

O R D E R
[Order of the Court was made by M.JAICHANDREN, J.]

This Habeas Corpus Petition has been filed by the brother of the detenu, namely, Kesavan, aged 24 years, son of Siva, to issue a Writ of Habeas Corpus, to call for the records in 702/BDFGISSSV/2015, dated 7.8.2015, passed by the 2nd respondent, detaining the detenu, under Section 3(1) of 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 14/1982), branding him as a "Goonda", and to quash the same and to direct the respondents to produce the body and person of the detenu and set him at liberty.

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, has been received by the Government on 25.8.2015 and remarks have been called for from the detaining authority on 26.8.2015. However, the remarks have been received by the Government only on 2.9.2015, after a delay of 7 days. He adds that the file was dealt with by the Minister concerned on 3.9.2015 and the rejection letter was communicated to the detenu on 4.9.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 2 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 5 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, the learned Additional Public Prosecutor had submitted that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. The learned Additional Public Prosecutor had further submitted that there was no deliberate delay on the part of the authorities concerned to consider and dispose of the representation of the detenu. It is contended that such a delay is not fatal to the impugned detention order, as the authorities concerned are dealing with the file right from the date of receipt of the representation 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 was received by the Government on 25.8.2015 and remarks have been called for from the detaining authority on 26.8.2015. However, remarks have been received by the Government only on 2.9.2015, i.e., after a delay of 7 days and the case of the detenu was dealt with by the Minister concerned on 3.9.2015. From the above, it is clear that in between 26.8.2015 and 2.9.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 7 days. Even if we give concession to the 2 intervening holidays including Government holidays, namely 29.8.2015 and 30.8.2015, still there is a delay of 5 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 5 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 5 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 dated 7.8.2015, 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(CS III)

//True Copy//

To Sub Assistant Registrar

1. The State of Tamil Nadu
rep by its Secretary to the Government
Home Prohibition & Excise Department
Fort St. George, Chennai - 600 009
2. The Commissioner of Police
Chennai Police, Vepery, Chennai
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.2086 of 2015

VSN(CO)
CA(08/03/2016)