

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No. 2277 of 2015

S.Karpagavalli

.. Petitioner

Vs.

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

2. The Commissioner of Police
Chennai Police (Goondas Section)
Vepery
Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order in B.C.D.F.G.I.S.S.V.V. No.816/2015, dated 28.08.2015, on the file of the second respondent and set aside the same as illegal and to direct the respondents to produce the detenu Shanmugam, aged 33 years, S/o.Devaraj, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Mr.A.N.Thambidurai
Addl. 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 wife of the friend of the detenu to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order passed by the 2nd respondent in B.C.D.F.G.I.S.S.V.V. No.816/2015, dated 28.08.2015, detaining the detenu, namely, Shanmugam, aged 33 years, S/o.Devaraj, under Section 3(1) of the Tamil Nadu

Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda" as contemplated u/s.2(f) of the Tamil Nadu Act 14 of 1982, 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, Mr.M.Krishnamoorthy, 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 1st representation of the detenu. According to the learned counsel for the petitioner, the 1st representation of the detenu has been received by the Government on 08.09.2015 and remarks have been called for from the detaining authority on 09.09.2015. However, the remarks have been received by the Government only on 28.09.2015, after a delay of 19 days. He adds that the file was dealt with by the Minister concerned on 08.10.2015 and the rejection letter was prepared on 08.10.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 8 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 11 days, which remains unexplained. The unexplained delay in considering the 1st 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, Mr.A.N.Thambidurai, 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 1st 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 1st 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 1st representation of the detenu was

received by the Government on 08.09.2015 and remarks have been called for from the detaining authority on 09.09.2015. However, the remarks have been received by the Government only on 28.09.2015, after a delay of 19 days and the case of the detenu was dealt with by the Minister concerned on 08.10.2015 and the same was rejected on 08.10.2015. From the above, it is clear that in between 09.09.2015 and 28.09.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 19 days. Even if we give concession to the 8 intervening holidays including Government Holidays viz. 12.09.2015, 13.09.2015, 17.09.2015, 19.09.2015, 20.09.2015, 24.09.2015, 26.09.2015, and 27.09.2015, still there is a delay of 11 days, which remain unexplained.

6. It is trite law that the 1st 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 1st 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 11 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 11 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 1st representation of the detenu.

11. Accordingly, the habeas corpus petition is allowed and the detention order dated 28.08.2015, 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 VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
Chennai Police (Goondas Section),
Vepery,
Chennai-600 007.
3. The Superintendent of Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate sr.10145

H.C.P.No.2277 of 2015

sv(CO)
srg(21/03/2016)