

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

H.C.P. NO. 2323 OF 2015

Dhanam

... Petitioner

- Vs -

1. State
rep. by its Secretary to Govt.
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009.

2. The District Collector and
District Magistrate
Kancheepuram District.

... Respondents

Petition preferred under Article 226 of The Constitution of India praying this Court to issue a Writ of Habeas Corpus to call for the records pertaining to the detention order passed by the 2nd respondent in BCDFGISSSV No.67/2015 dated 2.9.2015 and quash the same and direct the respondents to produce the detenu, Prabhu, S/o Prakash, aged 26 years who is now detained in Central Prison, Vellore - 02 before this Court and set him at liberty.

For Petitioner : Mr. S.Swamidoss Manokaran

For Respondents : Mr. A.N.Thambidurai,
Additional Public Prosecutor

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ORDER
(DELIVERED BY R.SUDHAKAR, J.)

The petitioner is the wife of the detenu Prabhu. The detenu was detained by the 2nd respondent under the provisions of Act 14 of 1982 by branding him as a Goonda as he had come to the adverse notice of the authorities in the crimes committed under the Tamil Nadu Act 14 of 1982.

2. Both the sides have agreed that the entire grounds of detention need not be extracted in this order as the petitioner is not questioning the subjective satisfaction arrived at by the detaining authority and the validity of the detention order has to be decided on the ground of delay in considering the representation.

3. The learned counsel for the petitioner submits that the petitioner sent a representation dated 06.09.2015 to the detaining authority, who is the 2nd respondent herein, and the same was received by the 2nd respondent on 15.09.2015. It is not in dispute that the order of detention was passed on 2.9.2015 and within a period of ten days from the said date, the representation was sent by the petitioner. Remarks were called for on 16.9.2015 and after a period of 5 days, remarks were received on 21.09.2015. The file was submitted to the Under Secretary on 22.09.2015 and on 22.09.2015, the file was placed before the Deputy Secretary. The file was thereafter placed before the concerned Minister on 25.09.2015, who passed the order rejecting the representation, which was communicated to the detenu on 29.09.2015. It is submitted by the learned counsel for the petitioner that in all there is a delay of 12 days between 15.09.2015 when remarks were called for and the order rejecting the representation was passed on 29.09.2015. Between 16.09.2015 and 21.09.2015, when remarks were called for there is a delay of 5 days and between 22.09.2015 and 29.09.2015 when the file was dealt with by the Minister and rejection order was communicated, there is a delay of 7 days. Even excluding the holidays between the whole period, there is a delay of 8 days in considering the representation and passing orders, which delay has not been satisfactorily explained by the respondents and, therefore, on the ground of delay in considering the representation, the detention order is liable to be set aside.

4. We have heard the learned Addl. Public Prosecutor on the above contention, who fairly submits that the representation dated 06.09.2015 was received by the Collector on 15.09.2015 and remarks were called for and final order rejecting the representation came to be passed on 29.09.2015 and there is a delay of 12 days in considering the representation.

5. In the decision in *Khatoon Begum - Vs - Union of India* (1981 (2) SCC 480), the Supreme Court held that it is the mandate of the Constitution that the representation filed by the detenu needs to be considered at the earliest opportunity without there being any delay and any circumlocutory procedures in the State enactments will contravene the constitutional mandate. In the said context, the Supreme Court held as under :-

"6. The right of a detenu to have his representation considered "at the earliest opportunity" and the obligation of the detaining authority to consider the representation "at the earliest opportunity" are not a right and an obligation flowing from either the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, or the National Security Act or, for that matter any other Parliamentary or State law providing for preventive detention. They are a right and an obligation created by the very Constitution which breathes life into the Parliamentary or State law. Article 22(5) enjoins a duty on the authority making the order of detention to afford the detenu "the earliest opportunity of making a representation against the order". The right and obligation to make and to consider the representation at the earliest opportunity is a constitutional imperative which cannot be curtailed or abridged. If Parliament or the State legislature making the law providing for preventive detention devises a circumlocutory procedure for considering the representation or if the inter-departmental consultative procedures are such that delay becomes inevitable, the law and the procedures will contravene the constitutional mandate. It is essential that any law providing for preventive detention and any authority obliged to make orders for preventive detention should adopt procedures calculated towards expeditious consideration of representations made by detenus. It will be no answer to a demand for liberty to say that administrative red tape makes delay inevitable."

6. In yet another decision in the case of Rajammal - Vs - State of Tamil Nadu (1999 (1) SCC 417), the Supreme Court, while dealing with a case of delay in considering the representation submitted by the detenu as against the order of detention, held as under :-

"7. 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. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi v. Union of India. The following observations of the Bench can profitably be extracted here:

"It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

7. The fact that on the representation submitted by the petitioner remarks were called for and subsequent to receiving the remarks after a delay of 5 days, the file was placed before the concerned Minister on 22.09.2015 and the order rejecting the representation was communicated only on 29.9.2015, where too, there is a delay of 7 days. Overall, there is a delay of 12 days between the time remarks were called for and the order of rejection was passed and the said delay has not been

satisfactorily explained by the respondents. The delay has been caused on account of the lapse in considering the representation, which adversely affects the further detention of the prisoner, since the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Therefore, the unexplained delay is fatal to the order of detention and the representation having not been considered in an expeditious manner, the order of detention gets vitiated and it is liable to be quashed.

8. In the result, the detention order passed by the 2nd respondent detaining the detenu, Prabhu, S/o Prakash, made in BCDFGISSSV No.67/2015 dated 02.09.2015 is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Govt.
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009.
2. The District Collector and
District Magistrate
Kancheepuram District.
3. The Superintendent of Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor
High Court, Madras.

H.C.P. NO.2323 OF 2015

KK(CO)
CA(07/04/2016)