

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

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THE HONOURABLE DR.JUSTICE S.TAMILVNAN
and
THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

H.C.P.No.2388 of 2015

Moshin

Vs.

.. Petitioner

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Chennai City.

..

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 27.07.2015 in BCDFGISSSV No.603/2015 against the petitioner's friend Deena @ Dinakaran, male, aged about 23 years, son of Durai, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.A.N.Thambidurai, APP

O R D E R

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

The petitioner herein is the friend of the detenu has filed this petition challenging the order of detention passed by the 2nd respondent in No.603/BCDFGISSSV/2015 dated 27.07.2015, branding his friend 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, has been received by the Government on 26.09.2015 and remarks have been called for from the detaining authority on 29.09.2015; but, the remarks have been received by the Government only on 09.10.2015, after a delay of 10 days. He adds that the file was dealt with by the Minister concerned on 15.10.2016 and the rejection letter was prepared on 16.10.2015 and the same was communicated to the detenu only on 20.10.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 4 intervening holidays including Government Holidays and even after giving concession as to the intervening holidays, still there is a delay of 6 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 26.09.2015 and that was forwarded to the Detaining Authority, calling for remarks on 29.09.2015 and remarks were received by the Government on 09.10.2015 and ultimately, the representation was considered and rejected on 16.10.2015 and the result of the consideration was communicated to the detenu on 20.10.2015. 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, on the representation of the detenu was received by the Government on 26.09.2015 and remarks have been called for from the detaining authority on 29.09.2015. But, remarks have been received by the Government only on 09.10.2015, i.e., after a delay of 10 days and the case of the detenu was dealt with by the Minister concerned on 15.10.2015 and the same was rejected on 16.10.2015. From the above, it is clear that in between 29.09.2015 and 09.10.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is

a delay of 10 days. Even if we give concession to the 4 intervening holidays including Government Holidays, namely 30.09.2015, 02.10.2015, 03.10.2015 and 04.10.201, 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 6 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 6 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 03.08.2015, 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/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

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

H.C.P.No.2388 of 2015

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