IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.3.2016

CORAM

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

H.C.P.No.2509 of 2015

Govindaraj .. Petitioner

Vs.

1. The Secretary to the Government
   Home Prohibition & 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 2nd respondent dated 10.9.2015 in Memo No.906/BDFGISSV/2015 against the petitioner son Logu @ Loganathan, male, aged 24 years, s/o.Govindaraj, who is confined at Central Prison, Puzhal II, Chennai, and set side the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
For Respondents : Mr.A.N.Thambi Durai
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 father of the detenu, namely, Logu @ Loganathan, aged 24 years, son of Govindaraj, to issue a Writ of Habeas Corpus, to call for the records in Memo No.906/BDFGISSV/2015, dated 10.9.2015, passed by the 2nd respondent, detaining the detenu, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders,

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Sexual 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 30.9.2015 and remarks have been called for from the detaining authority on 30.9.2015. However, the remarks have been received by the Government only on 9.10.2015, after a delay of 9 days. He adds that the file was dealt with by the Minister concerned on 15.10.2015 and the rejection letter was communicated to the detenu on 19.10.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 3 intervening 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, 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 30.9.2015 and remarks have been called for from the detaining authority on 30.9.2015. However, remarks have been received by the Government only on 9.10.2015, i.e., after a delay of 9 days and the case of the detenu was dealt with by the Minister concerned on 15.10.2015. From the above,

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it is clear that in between 30.9.2015 and 9.10.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 9 days. Even if we give concession to the 3 intervening holidays including Government holidays, namely 2.10.2015, 3.10.2015 and 4.10.2015, 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.

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11. Accordingly, the habeas corpus petition is allowed and the detention order dated 10.9.2015, 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(CO)

//True Copy//

Sub Assistant Registrar

To:

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

2. The Commissioner of Police
   Chennai City

3. The Superintendent, Central Prison,
   Puzhal, Chenani-66.

4. The Joint Secretary to Government Public
   (Law & order), Fort St. George, Chennai. 600 009.

5.The Public Prosecutor, High Court, Madras.

H.C.P.No.2509 of 2015

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