

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM

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

H.C.P.No.2701/2015

Priya

.. Petitioner

vs.

1.State of Tamil Nadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, 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 entire records, relating to petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 31.07.2015 on the file of the second respondent herein made in proceedings BCDFGISSSV No.672/2015 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's husband namely Sathish Kumar @ Jothi Bas, son of Munivel, aged 25 years, before this Court and set the petitioner's husband at liberty from detention, now petitioner's husband detained at Central Prison-II, Puzhal, Chennai-600 066.

For petitioner : Mr.C.C.Chellappan

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

ORDER

(Order of the Court made by S.TAMILVANAN, J.)

Petitioner, who is the wife of the detenu Sathish Kumar @ Jothi Bas, son of Munivel, aged 25 years, has filed this petition challenging the order of detention passed by the 2nd respondent in BCDFGISSSV No.672/2015 dated 31.07.2015, branding the detenu as a "Goonda" under 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 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, dated 31.08.2015. According to the learned counsel for the petitioner, the representation dated 31.08.2015, has been received by the Government on 04.09.2015; the remarks were called on 07.09.2015. But the said remarks were received only on 15.09.2015; after a delay of eight days. He adds that though the file was submitted to the Under Secretary on 16.09.2015, the Minister has dealt with the said file of the detenu only on 19.09.2015, with a further delay of three days and the rejection letter was sent to the detenu only on 22.09.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were eight intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of six 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 04.09.2015 and that was forwarded to the Detaining Authority, calling for remarks on 07.09.2015 and remarks were received by the Government on 15.09.2015 and ultimately, the representation was considered and rejected on 21.09.2015 and the result of the consideration was communicated to the detenu on 23.09.2015. 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, dated 31.08.2015 which was received by the Government on 04.09.2015, remarks have been called for from the detaining authority on 07.09.2015. But, remarks have been received by the Government only on 15.09.2015 and the case of the detenu was dealt with by the Minister only on 19.09.2015, i.e., after a delay of four

days and thereafter, the representation has been considered by the authorities concerned and rejected on 21.09.2015. From the above, it is clear that in between 07.09.2015 and 15.09.2015, there is a delay of eight days. Even if we give concession to the two intervening holidays, namely 12.09.2015 and 13.09.2015, still there is a delay of six 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 six 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 Hon'ble 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 six 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 Hon'ble 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 in BCDFGISSSV No.672/2015 dated 31.07.2015, 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2. The Commissioner of Police,
Chennai Police, Vepery,
Chennai-600 007.

3. The Superintendent of Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor, High Court, Madras.

5. The Joint Secretary to Government
Public Law and Order Department,
Secretariat, Chennai-9

H.C.P.No.2701/2015

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