

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM

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

H.C.P.No.2807 of 2015

V.Subhasree

.. Petitioner

Vs.

1.State of Tamilnadu

Rep. by its Secretary to Government,
Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
E.V.R.Periyar Salai,
Vepery, Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to produce the body of Tr.Sumesh, who is detained in Central Prison II, Puzhal, before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 29.09.2015 made in Memo No.1038/BCDFGISSSV/2015 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.N.Saravanan

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

O R D E R

[Order of the Court was made by M.JAICHANDREN,J.]

The petitioner herein is the mother of the detenu has filed this petition challenging the order of detention passed by the 2nd respondent in memo No.1038/BCDFGISSSV/2015 dated 29.09.2015, branding her son 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 16.10.2015 and remarks have been called for from the detaining authority on 20.10.2015; but, the remarks have been received by the Government only on 02.11.2015, after a delay of 13 days. He adds that the file was dealt with by the Minister concerned on 11.11.2015 and the rejection letter was prepared and communicated to the detenu also on the same day, i.e., on 12.11.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 7 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, learned Additional Public Prosecutor submitted that the Government received the representation on 16.10.2015 and that was forwarded to the Detaining Authority, calling for remarks on 20.10.2015 and remarks were received by the Government on 02.11.2015 and ultimately, the representation was considered and rejected on 12.11.2015. 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 16.10.2015 and remarks have been called for from the detaining authority on 20.10.2015. But, remarks have been received by the Government only on 02.11.2015, i.e., after a delay of 13 days and the case of the detenu was dealt with by the Minister concerned on 11.11.2015 and the same was rejected on the same day, i.e., on 12.11.2015. From the above, it is clear that in between 20.10.2015 and 02.11.2015,

[i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 13 days. Even if we give concession to the 7 intervening holidays including Government holidays, namely 21.10.2015, 22.10.2015, 23.10.2015, 24.10.2015, 25.10.2015, 31.10.2015 and 01.11.2015, 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.

11. Accordingly, the habeas corpus petition is allowed and the detention order dated 29.09.2015, 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 III)

//True Copy//

Sub Assistant Registrar

To

1.State of Tamilnadu

Rep. by its Secretary to Government,
Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,

Greater Chennai,
E.V.R.Periyar Salai,
Vepery, Chennai-600 007.

3.The Superintendent,

Central Prison,
Puzhal Chennai.

4.The Joint Secretary to Government,

Public Law & Order,
Fort St.George, chennai-9.

5.The Public Prosecutor,

High Court,
Madras.

H.C.P.No.2807 of 2015

mg(CO)

srg(29/03/2016)