

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.5.2016

CORAM

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.49 of 2016

Bharathi

... Petitioner

Vs.

1. The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.
2. The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St.George,
Chennai - 600 009.
3. The Superintendent,
Special Prison for Women,
Central Prison,
Puzhal, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the first respondent herein and made in No.1167/B.C.D.F.G.I.S.S.S.V./2015 dated 05.11.2015, and to set aside the same and direct the third respondent to produce the detinue, mother of the petitioner, Tmt. Lakshmi, w/o.Ashok, aged 35 years, now confined in Special Prison for Women, Puzhal, Chennai before this Court and thereby setting her at liberty.

For Petitioner : Mr.T.S.Srinivasan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by G.CHOCKALINGAM, J.]

The petitioner herein is the daughter of the detenu and she has filed this petition challenging the order of detention passed by the first respondent in No.1167/B.C.D.F.G.I.S.S.S.V./2015 dated 05.11.2015, branding her mother as a "DRUG OFFENDER" as contemplated under Section 2(e) of the Tamilnadu 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 dated 21.12.2015, has been received by the Government on 22.12.2015 and remarks have been called for from the detaining authority on 23.12.2015; but, the remarks have been received by the Government only on 05.01.2016, after a delay of 14 days. He adds that the file was dealt with by the Minister concerned on 27.1.2016 and the rejection letter was prepared and communicated to the detenu also on 29.1.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 6 intervening holidays and even after giving concession as to the intervening holidays including Government Holidays, still there is a delay of 8 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 22.12.2015 and that was forwarded to the Detaining Authority, calling for remarks on 23.12.2015 and remarks were received by the Government on 05.01.2016 and ultimately, the representation was considered and rejected on 28.1.2016 and the result of the consideration was communicated to the detenu on 29.1.2016. 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 detainee dated 21.12.2015 was received by the Government on 22.12.2015 and remarks have been called for from the detaining authority on 23.12.2015. But, remarks have been received by the Government only on 05.01.2016, i.e., after a delay of 14 days and the case of the detainee was dealt with by the Minister concerned on 27.1.2016 and the same was rejected on 29.1.2016. From the above, it is clear that in between 23.12.2015 and 05.01.2016, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 14 days. Even if we give concession to the 6 intervening holidays including Government holidays, namely 25.12.2016, 26.12.2016, 27.12.2016, 01.01.2016, 02.01.2016 and 03.01.2016, still there is a delay of 8 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 8 days. Therefore, we have to hold that the delay has vitiated further detention of the detainee.

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 8 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 detainee, 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 detainee.

11. Accordingly, the habeas corpus petition is allowed and the detention order passed by the first respondent is quashed. The detainee is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

ga/kua

To

1. The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.
2. The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St. George, Chennai - 600 009.
3. The Superintendent,
Special Prison for Women,
Central Prison,
Puzhal, Chennai.
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.49 of 2016

ALA (CO)
CA (10/06/2016)