

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

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

H.C.P.No.539 of 2016

Saroja

...Petitioner

Vs.

1.The State of Tamil Nadu
represented by its Secretary to Government
Department of Prohibition and Excise (Home)
Fort St. George, Chennai-9.

2.The Commissioner of Police
Chennai City Police
Commissioner Office, Vepery
Chennai-7.

..Respondents

Prayer: 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, in BCDFGISSSV No.222/2016, dated 01.03.2016, against the detenu, viz., Thiru. Sivakumar @ Kumar, son of Seyperumal, aged about 31 years, who is confined at the Central Prison, Puzhal, Chennai, and to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner

: M/s.Ilayaraja Kandasamy

For Respondents

: Mr.V.M.R.Rajentren,

Additional Public Prosecutor

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ORDER

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

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Sivakumar @ Kumar, son of Seyperumal, aged about 31 years, to issue a Writ of Habeas Corpus, to call for the records, relating to the Detention Order in BCDFGISSSV No.222/2016, dated 01.03.2016, passed by the Commissioner of

Police, Greater Chennai Police, the second respondent herein, 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, 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. Though various grounds have been raised in the affidavit filed in support of the petition, the learned counsel appearing on behalf of the petitioner has confined his arguments only in respect of delay in considering the representation of the detenu.

3. According to the learned counsel for the petitioner, the representation of the detenu, has been received by the Government, on 18.05.2016, and the remarks have been called for from the detaining authority, on 20.05.2016. However, the remarks have been received by the Government only on 30.05.2016, after a delay of 9 days. She has added that the file was dealt with by the Deputy Secretary on 31.05.2016 and the same was also dealt with by the Minister on 04.06.2016 and the rejection letter was communicated to the detenu, on 07.06.2016.

4. The learned counsel has submitted that as per the Proforma submitted by the learned Additional Public Prosecutor, there was a delay of 12 days and there were 6 intervening holidays and even if the holidays are deducted, 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.

5. 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 in considering and disposing of the representation of the detenu. It is contended that such a delay is not fatal to the impugned order of detention, as the authorities concerned are dealing with the file right from the date of receipt of the representation without any let-up, and therefore, he prayed for the dismissal of the petition.

6. We have considered the rival submissions carefully with regard to the facts as well as the decisions cited and perused the materials available on record.

7. As per the Proforma submitted by the learned Additional Public Prosecutor, the representation of the detenu was received by the Government on 18.05.2016 and the remarks have been called for from the detaining authority on 20.05.2016. However, the remarks have been received by the Government only on 30.05.2016, i.e., after a delay of 9 days and the case of the detenu was dealt with by the Deputy Secretary on 31.05.2016 and the same was also dealt with by the Minister concerned on 04.06.2016 and the same was rejected on 06.06.2016. From the above, it is clear that in between 20.05.2016 and 30.05.2016, [i.e., the intervening days between the remarks called for and the remarks received] there is a delay of 9 days. Even if we have taken into account the 6 days of intervening holidays including the Government holidays, still there is a delay of 6 days, which remains unexplained.

8. 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 the order of detention.

9. 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."

10. 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, in the case on hand, the delay of 6 days has not at all been explained properly.

11. Further, in a decision in Ummu Sabeena vs. State of Kerala reported in (2011) 10 SCC 781, 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.

12. 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.

13. Accordingly, the habeas corpus petition is allowed and the detention order, dated 01.03.2016, passed by the second 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 II)

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Sub Assistant Registrar

rnb
To

1. The Secretary to Government
Home Prohibition and Excise Department,
Secretariat, Chennai-9.
2. The Commissioner of Police
Greater Chennai Police
Office of the Commissioner of Police
Vepery, Chennai-7.
3. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.

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