

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.605 of 2016

Jayanthimala

Petitioner

..
Vs.

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

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

.. 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 second respondent, dated 17.02.2016, in No.131/BCDFGISSSV/2016 approved by the first respondent and set aside the same and produce the detainee Vani @ Vennila, female, aged 36 years, W/o. Nagaraj, now detained in Special Prison for Women, Puzhal, Chennai, before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.V.M.R.Rajentren,

Addl. Public Prosecutor.

सत्यमेव जयते

O R D E R

[Order of the Court was made by S.NAGAMUTHU, J.]

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This Habeas Corpus Petition has been filed by the mother of the detainee, namely, Vani @ Vennila, aged 36 years, son of Nagaraj, to issue a Writ of Habeas Corpus, to call for the records in No.131/BCDFGISSSV/2016, dated 17.02.2016, passed by the 2nd respondent, detaining the detainee, under Section 3(1) of 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 14/1982), branding her as an "Immoral Traffic Offender", and to quash the same and to direct

the respondents to produce the body and person of the detenue and set her 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 detenue. According to the learned counsel for the petitioner, the representation of the detenue, has been received by the Government on 03.03.2016 and remarks have been called for from the detaining authority on 03.03.2016. However, the remarks have been received by the Government only on 05.04.2016, after a delay of 33 days. He adds that the file was dealt with by the Minister concerned on 17.05.2016, with a further delay of 42 days and the rejection letter was communicated to the detenue on 19.05.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 27 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 48 days, which remains unexplained. The unexplained delay in considering the representation of the detenue 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 detenue. 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 detenue was received by the Government on 03.03.2016 and remarks have been called for from the detaining authority on 03.03.2016. However, remarks have been received by the Government only on 05.04.2016, i.e., after a delay of 33 days and the case of the detenue was dealt with by the Minister concerned on 17.05.2016 and the same was rejected on 18.05.2016. From the above, it is clear that in between 03.03.2016 and 05.04.2016 [i.e., the intermittent days between the remarks called for and the remarks received] and in

between 05.04.2016 and 17.05.2016 (i.e., the intermittent days between the file dealt with by the Deputy Secretary and the Minister concerned), there is a total delay of 75 days. Even if we give concession to the 27 intervening holidays including Government holidays, namely 05.03.2016, 06.03.2016, 12.03.2016, 13.03.2016, 19.03.2016, 20.03.2016, 25.03.2016, 26.03.2016, 27.03.2016, 01.04.2016, 02.04.2016, 03.04.2016, 08.04.2016, 09.04.2016, 10.04.2016, 14.04.2016, 16.04.2016, 17.04.2016, 19.04.2016, 23.04.2016, 24.04.2016, 30.04.2016, 01.05.2016, 07.05.2016, 08.05.2016, 14.05.2016, and 15.05.2016, still there is a delay of 48 days, which remains 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 48 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 detainee 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, 48 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, dated 17.02.2016, passed by the second respondent, is quashed. The detainee is directed to be set at liberty forthwith, unless her presence is required in connection with any other case.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 600 009.
2. The Commissioner of Police
Vepery,
Chennai - 600 007.
- 3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
- 4.The Joint Secretary, Public (L&O) Fort St.george,
Chennai.
- 5.The Public Prosecutor, High Court, Madras.

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krd 12/9

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