

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.726 of 2016

Tmt.M.Asha

.. Petitioner

Vs.

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

2. The Commissioner of Police
Greater Chennai,
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 30.03.2016, in No.365/BCDFGISSSV/2016 approved by the first respondent and quash the same as illegal and consequently direct the respondents to produce the detainee Latha, W/o. Murugesan, aged 46 years, now confined in Special Prison for Women, Puzhal, Chennai, before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.S.Kingston Jerold

For Respondents : Mr.V.M.R.Rajentren,
Addl. Public Prosecutor.

O R D E R

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

This Habeas Corpus Petition has been filed by the daughter of the detainee, namely, Tmt.Latha, aged 46 years, wife of Murugesan, to issue a Writ of Habeas Corpus, to call for the

records in No.365/BCDFGISSSV/2016, dated 30.03.2016, 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 a "Bootlegger", and to quash the same and to direct the respondents to produce the body and person of the detainee 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 detainee. According to the learned counsel for the petitioner, the representation of the detainee, has been received by the Government on 07.04.2016 and remarks have been called for from the detaining authority on 07.04.2016. However, the remarks have been received by the Government only on 20.04.2016, after a delay of 13 days. He adds that the file was dealt with by the Minister concerned on 17.05.2016, with a further delay of 27 days and the rejection letter was communicated to the detainee on 19.05.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 15 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 25 days, which remains unexplained. The unexplained delay in considering the representation of the detainee 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 detainee. 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 detainee was received by the Government on 07.04.2016 and remarks have been called for from the detaining authority on 07.04.2016. However, remarks have been received by the Government only on 20.04.2016, i.e., after a delay of 13 days and the case of the detainee 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 07.04.2016 and 20.04.2016 [i.e., the intermittent days between the remarks called for and the remarks received] and in between 20.04.2016 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 40 days. Even if we give concession to the 15 intervening holidays including Government holidays, namely, 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 25 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 25 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, 25 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 30.03.2016, 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. Consequently, the connected Crl.M.P.No.8432 of 2016 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

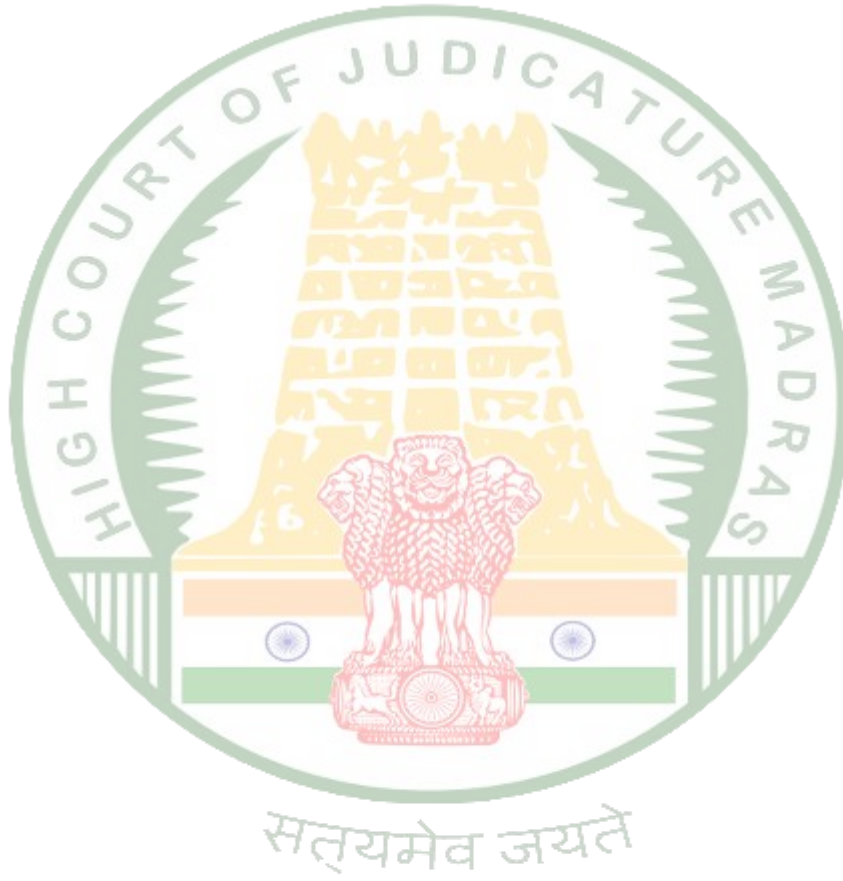
To

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.726 OF 2016

TM (CO)
MD : 14/09/2016



WEB COPY