

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2016

CORAM

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

H.C.P.NO.870 OF 2016

Shobana

... Petitioner

Vs.

1. The Commissioner of Police,
Chennai City
Vepery, Chennai - 600 007.
2. The Secretary to the Government
Government of Tamil Nadu
Home Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records of the 1st respondent herein concerned in Memo No.258/BCDFGISSSV/2016 dated 07.03.2016, setting aside the order of detention passed therein against the detenu herein and directing the respondents herein to produce the body and person of the detenu by name Tmt. Lalitha, wife of Ponraj, before this Court, setting her at liberty now detained in Special Prison for Women, Puzhal, Chennai.

For Petitioner : Mr.M.Gopinathan

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

O R D E R

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

This Habeas Corpus Petition has been filed by the daughter of the detenu, namely P.LALITHA, aged 50 years, wife of Ponraj, to issue a Writ of Habeas Corpus, to call for the records, in Detention Order No.258/BCDFGISSSV/2016 dated 07.03.2016, passed by the Commissioner of Police, Greater Chennai Police, the first respondent herein, detaining the

detenue, 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 her as a "Goonda", and to quash the same and to direct the respondents to produce the body and person of the detenue, who is now detained in Special Prison for Women, Puzhal, Chennai 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 22.03.2016, and the remarks have been called for from the detaining authority, on 22.03.2016. However, the remarks have been received by the Government only on 13.04.2016, after a delay of 23 days. Thereafter, the file was dealt with by the Under Secretary and Deputy Secretary on 13.04.2016. He adds that the file was dealt with by the Minister concerned, on 17.05.2016 and the rejection letter was communicated to the detenue, on 19.05.2016. Here again, there is a delay of 36 days, excluding 12 intervening holidays. There is delay at at different stages while considering the representation of the detenu. 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, 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 detenu was received by the Government on 22.03.2016 and the remarks have been called for from the detaining authority on 22.03.2016. However, the remarks have been received by the Government only on 13.04.2016, after a delay of 23 days. Thereafter, the file was dealt with by the Under Secretary and Deputy Secretary on 13.04.2016. He adds that the file was dealt with by the Minister concerned, on 17.05.2016 and the rejection letter was communicated to the detenu, on 19.05.2016. Here again, there is a delay of 26 days, excluding 12 intervening holidays. There is delay at at different stages while considering the representation of the detenu. Even if we give concession to the intervening holidays, including Government holidays, namely 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 26 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 26 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 26 days delay has not been properly explained at all.

9. 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 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 07.03.2016 passed by the first 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/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Commissioner of Police,
Chennai City
Vepery,
Chennai - 600 007.
2. The Secretary to the Government
Government of Tamil Nadu
Home Prohibition and Excise Department
Fort St. George,
Chennai - 600 009.
3. The Superintendent,
Special Prison for Women,
Puzhal, Chennai.

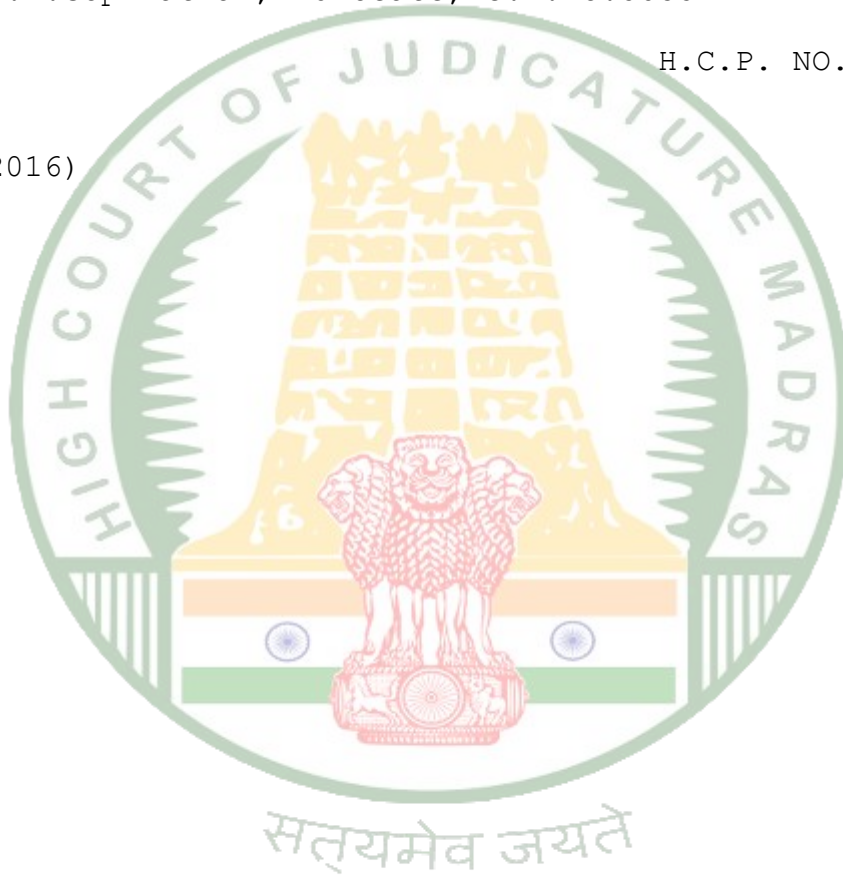
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George,
Chennai - 9.

5. The Public Prosecutor
High Court of Madras
Chennai.

+lcc to Mr.M.Gopinathan, Advocate, S.R.No.58354

H.C.P. NO.870 OF 2016

SCD(CO)
CA(23/11/2016)



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