



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Habeas Corpus Petition (MD) No.148 of 2016

Nijamudeen

... Petitioner

Vs.

1. State represented by
The Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 9.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
3. The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in C.No.01/Detention/C.P.O/ T.C/2016, dated 11.01.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner, namely, Nijamudeen, son of Settu, Male, aged 34 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu
For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.

ORDER

(Order of the Court was made by **R.MAHADEVAN, J**)

<https://hcservices.ehcs.gov.in/hcservices>
The petitioner is the detenu, namely, Nijamudeen, son of Settu, aged 34 years, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the second respondent, in his



proceedings in C.No.01/Detention/C.P.O./T.C/2016, dated 11.01.2016, branding him as a 'Goonda'. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. Though this matter stood adjourned to 07.06.2016, it has been listed before this Court as per the Special Criminal Division Bench sitting arrangements during Vacation Holidays and by consent of either side, this matter is taken up for disposal.

3. We have heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

4. It is submitted by the learned Counsel appearing for the petitioner that there is inordinate delay in disposal of the representation of the petitioner, which would vitiate the order of detention. The representation of the petitioner, dated 14.01.2016, was received by the Government on 25.01.2016, remarks were called for from the detaining authority on the same day and such remarks were received by the Government on 27.01.2016. The matter was placed before the Minister for Electricity and Prohibition and Excise Department on 14.02.2016 and dealt with by him on the same day. The rejection letter was prepared on 15.02.2016 and thereafter, it was sent to the detenu on 15.02.2016 and served on him on 19.02.2016. Therefore, it is the submission of the learned Counsel for the petitioner that there was 11 days delay between 28.01.2016 and 14.02.2016, leaving six holidays and the same would vitiate the order of detention passed against the petitioner.

5. On the submissions made by the learned Counsel for the petitioner, we heard the learned Additional Public Prosecutor appearing for the respondents.

6. The Hon'ble Supreme Court in **Rajammal vs. State of Tamil Nadu - [(1999) 1 SCC 417]**, in paragraphs 7 and 8 of the judgment has observed as follows:

"7. 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. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can not only consider whether the delay was occasioned due to permissible reasons or unavoidable causes. ...



8. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

7. In the decision in **Usha Agarwal v. Union of India and others - [(2007) 1 SCC 295]**, the Hon'ble Supreme Court, after referring to its Constitution Bench decision in **Kamlesh Kumar Ishwandas Patel v. Union of India - [(1995 (4) SCC 51)]**, has held that the result of consideration of the representation submitted by the detenu should also be communicated without unnecessary delay. The observation made by the Supreme Court reads as under:

"This Court has also repeatedly held that though there can be no specific or mechanical test for determining whether there has been undue delay, where there is an unexplained delay in either making the order or serving the order, it would vitiate the order of detention."

8. Keeping in view the law laid down by the Apex Court in the above cited cases, on a careful perusal of the materials available on record, we find that the delay in between 28.01.2016 and 14.02.2016 has not been properly explained by the authorities and in our considered view, such unexplained delay would vitiate the order of detention. On that ground alone, the petitioner is entitled to succeed.

9. In the result, the impugned detention order passed by the second respondent, detaining the detenu, namely, Nijamudeen, son of Settu, aged 34 years, made in C.No.01/Detention/C.P.O./T.C/2016, dated 11.01.2016, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



1. The Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3. The Superintendent,
Central Prison,
Tiruchirappalli.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

SMS/RSB

TE/NGM/SAR-I : 01/06/2016 : 4P/6C

Habeas Corpus Petition (MD) No.148 of 2016
23.05.2016