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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.239 of 2016

Natarajan

... Petitioner

Vs.

1.State represented by

The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2.The Deputy Inspector General of Police,
Tirunelveli Range &
Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the impugned order of detention made in No.78/BCDFGISSSV/2015, dated 28.11.2015 on the file of the Deputy Inspector General of Police, Tirunelveli Range and Commissioner of Police, Tirunelveli City, (Full Additional Charge), the second respondent herein, branding the detenu by name, N.Iyyappan, aged about 23 years, son of Natarajan Asari, as 'Goonda' who is now confined in Central Prison, Palayamkottai and quash the impugned order of detention by producing him before this Court.

For Petitioner : Mr.A.Thiruvadikumar

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.

ORDER

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

The petitioner is the detenu, namely, N.Iyyappan, son of Natarajan Asari, aged 23 years, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the second respondent, in his proceedings in No.78/BCDFGISSSV/2015, dated 28.11.2015, branding him as a 'Goonda'. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

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



3. 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 11.12.2015 was received by the Government on 14.12.2015, remarks were called for from the sponsoring authority on the same day and such remarks were received by the Government on 16.12.2015 and the same was forwarded to the Government on the same day. Thereafter, the said representation of the petitioner was rejected by the Government on 29.12.2015. Therefore, it is the submission of the learned Counsel for the petitioner that there was inordinate delay between 16.12.2015 and 29.12.2015 and the same would vitiate the order of detention passed against the petitioner.

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

5. In paragraph 5(c) of the counter affidavit filed by the second respondent, it has been stated as follows:

"(c). As far as the averment made in para (c) of the grounds of the affidavit is concerned, it is submitted that the representation dated 11.12.2015 of the petitioner addressed to the Detaining Authority was considered and parawar remarks were sent to the Government in this office letter in C.2.No.1825/COP/IS/TIN-C/2015, dated 16.12.2015. The details are as follows:

- | | |
|---|--------------|
| 1. Date of receipt of representation | : 14.12.2015 |
| 2. Date of calling for remarks from the
sponsoring authority | : 14.12.2015 |
| 3. Date of receipt of remarks from the
sponsoring authority | : 16.12.2015 |
| 4. Date of forwarding remarks to
Government | : 16.12.2015 |
| 5. Date of rejection by Government | : 29.12.2015 |

Holidays : Nil"

On perusal of the above, it is seen that there was a delay in considering the representation of the petitioner and the detaining authority also failed to explain the cause of such delay.

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 certainly 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 **Kamleshkumar 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 16.12.2015 and 29.12.2015 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, N.Iyyappan, son of Natarajan Asari, aged 23 years, made in No.78/BCDFGISSSV/2015, dated 28.11.2015, 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(W)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 9.

2. The Deputy Inspector General of Police,
Tirunelveli Range & Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City, Tirunelveli District.



3. The Superintendent,
Central Prison, Palayamkottai.
(In duplicate for communicate to detenu)

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

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

6. The Director General of Police, Chennai - 4.

+1cc to M/S.A.Thiruvadikumar, Advocate in SR.No.26820

Habeas Corpus Petition (MD) No.239 of 2016
23.05.2016

sms/rsb

PA/GSV/SAR II/02.06.2016/4P/9C