

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P.No. 1533 of 2016

J.Samidurai ... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
Home 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 of the 1st respondent culminating with the Detention Order bearing Detention Order dated 09.07.2016 on the file of the second respondent herein in proceedings No.666/BCDFGISSSV/2016 under Sub-Section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cuber 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 of 1982) read with orders issued by the Government in G.O (D) No.65, Home, Prohibition and Excise (XVI) Department dated 18.04.2016 under Sub-Section (2) of Section 3 of the said Act, quash the same and direct the respondents to produce the detenu namely, Mano @ Manoharan, male, aged 34 years before this Court and set the petitioner at liberty from detention, now the petitioner is detained at Central Prison, Puzhal, Chennai - 600 066.

For Petitioner : Mr.C.C.Chellappan
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Mano @ Manoharan, aged about 34 years, Son of Samidurai, to issue a Writ of Habeas Corpus, to call for the records, in Detention Order No.666/BCDFGISSSV/2016, dated 09.07.2016, passed by the second respondent herein, detaining him, 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 him as a "Goonda", in the Central Prison, Puzhal and to quash the same and to direct the respondents to produce the petitioner and to set him at liberty.

2. Heard Mr.ARL.Sundararesan, learned senior counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3.Though various grounds have been raised by the petitioner for quashing of the impugned detention order passed against the detenu dated 09.07.2016, he had laid emphasis on the fact that there has been an undue and unexplained delay in considering the representation made on behalf of the detenu.

4. Paragraph No.12 of the counter affidavit, dated 30.09.2016, filed on behalf of the respondents reads as follows:

"12. Regarding Paragraph 12 of the affidavit, it is submitted that the representation of the petitioner dated 25.07.2016 has been received in this Office on 28.07.2016 and the remarks on the representation were sent to Government and the same was considered and rejected by the Government vide Letter No.9642/H,P&E/X/2016, dated 23.08.2016."

From the said paragraph, it is clear that there has been a substantial delay, in the disposal of the representation. As stated therein, the reason for the delay has not been explained by the respondents.

4.It is trite law that the representation should be considered expeditiously and disposed of with a sense of

urgency and without any 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. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

5. 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."

6. As per the dictum laid down by the Supreme Court in the above cited case, the 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.

7. 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 detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

8. In the light of the above facts and the 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 detenu.

9. Accordingly, the habeas corpus petition is allowed and the detention order, dated 09.07.2016, passed by the second respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009

2.The Commissioner of Police
Greater Chennai, Vepery
Chennai

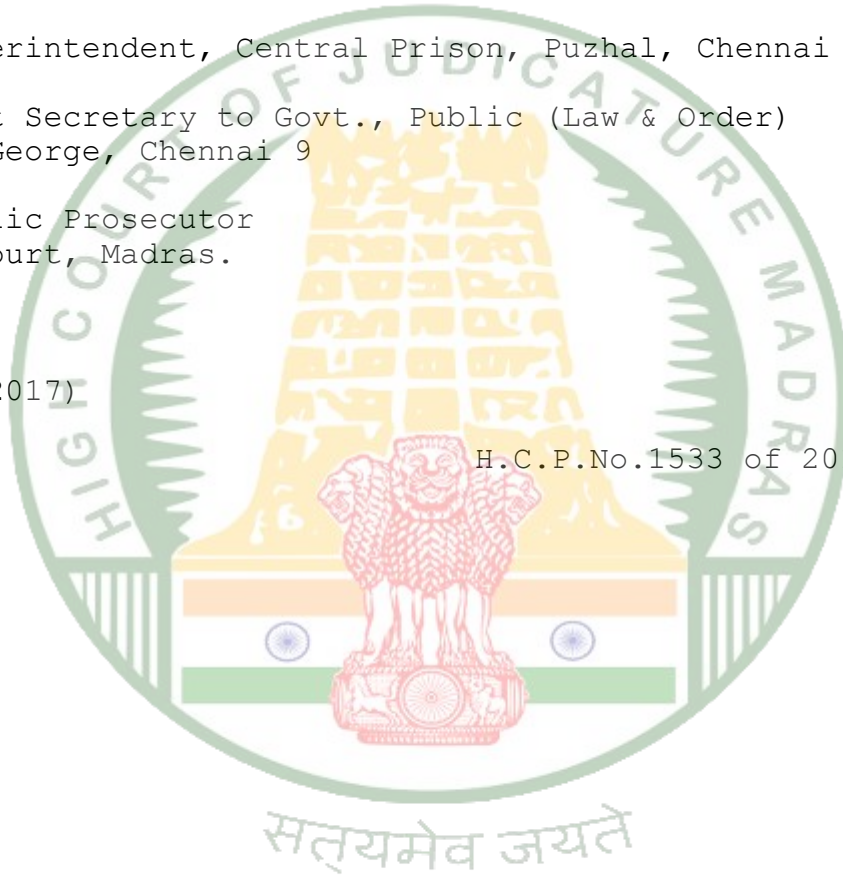
3 The Superintendent, Central Prison, Puzhal, Chennai

4 Te Joint Secretary to Govt., Public (Law & Order)
Fort St. George, Chennai 9

5.The Public Prosecutor
High Court, Madras.

rj (CO)
md(09/02/2017)

H.C.P.No.1533 of 2016



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