IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P.No. 1584 of 2016

Raviya Beevi .. Petitioner

Vs.

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

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 relating to the Detention Order passed by the 2nd respondent in BDFGISSSV No.680 of 2016 dated 12.07.2016 and to quash the same and direct the respondents to produce the person or body of the detenu Amsa @ Ameer Amsa, S/o.Khader, aged about 38 years, before this Court and set him at liberty, now detained at Central Prison, Puzhal.

For Petitioner : Mr.A.Nirmal Kumar

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 mother of the detenu, namely, Amsa @ Ameer Amsa, S/o.Khader, aged about 38 years, to issue a Writ of Habeas Corpus, to call for the records, in 680/BCDFGISSSV/2016 dated 12.07.2016, passed by the

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second respondent herein, detaining the detenu, 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 body and person of the detenu and to set him 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 detenu. According to the learned counsel for the petitioner, the representation of the detenu, has been received by the Government, on 03.08.2016, and the remarks have been called for from the detaining authority, on 04.08.2016. However, the remarks have been received by the Government only on 19.08.2016, after a delay of 17 days. He adds that the file was dealt with by the Deputy Secretary concerned, on 19.08.2016 and the same was dealt with by the Minister concerned, on 23.08.2016 and the same was rejected on 23.08.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 6 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 11 days, which remains unexplained. Thus, there is delay 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 detenu. 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. In the counter affidavit filed on behalf of the respondents, it had been stated that the detenu had committed

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grave offences, including an offence under Section 302 I.P.C. It had also been stated that recourse to normal criminal law would not have the effect of effectively preventing the detenu from indulging in such activities in future. The learned Additional Public Prosecution appearing for the respondent had also submitted that statutory bails have been granted to the detenu and therefore, he is likely to come out on bail and cause serious harm to the public order if the impugned order of detention is set aside.

5. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

6. As per the Proforma submitted by the learned Additional Public Prosecutor, the representation of the detenu was received by the Government on 03.08.2016 and the remarks have been called for from the detaining authority on 04.08.2016. However, remarks have been received by the Government only on 19.08.2016, i.e., after a delay of 17 days and the case of the detenu was dealt with by the Deputy Secretary concerned, on 19.08.2016 and the same was dealt with by the Minister concerned on 23.08.2016 and the representation was rejected on 23.08.2016. From the above, it is clear that in between 04.08.2016 and 19.08.2016, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 17 days. Thus, there is delay at different stages while considering the representation of the detenu. Even if we give concession to the intervening holidays including Government holidays, still there is a delay of 11 days, which remain unexplained.

7.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 11 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

8.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

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the representation should be considered and disposed of at the earliest."

9. 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 11 days delay has not been properly explained at all.

10. 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.

11. 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.

12. Accordingly, the habeas corpus petition is allowed and the detention order dated 12.07.2016, 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

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Sub Assistant Registrar

To

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

2.The Commissioner of Police
   Greater Chennai
   Vepery, Chennai - 600 007

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3.The Superintendent central Prison Puzhal,
Chennai.

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

5.The Public Prosecutor
High Court, Madras.

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