

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

HABEAS CORPUS PETITION No.1676 of 2016

Boopathy

... Petitioner

Vs.

- 1) The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2) The Commissioner of Police,
Commissioner Office,
Vepery, Chennai 600 007. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records in connection with the detention order in Memo No.749/2016, dated 20.07.2016, passed by the 2nd respondent, under the Tamil Nadu Act 14 of 1982, set aside the same and direct the respondent to produce the petitioner's son, Sakthivel, S/o.Boopathy, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's son, Sakthivel, S/o.Boopathy, aged about 23 years, the detenu, at liberty.

For Petitioner: Mr.M.Kaveriselvam

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

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

The petitioner's son Sakthivel, S/o.Boopathy, branded as a 'Goonda' in detention order, dated 20.07.2016, by the 2nd respondent/ Commissioner of Police, Vepery, Chennai, has sought for a Writ of Habeas Corpus.

2. The detenu has come to adverse notice of the police in four cases. Ground case has been registered in H3 Tondiarpet Police Station Cr.No.501/2016, under section 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC, in which, the detenu has been remanded. On being satisfied that the detenu

is indulging in activities, which are prejudicial to the maintenance of public health and public order, the detaining authority, has clamped a detention order, on the detenu.

3. Though the petitioner inter alia has raised many contentions, we do not propose to go into all the grounds of challenge, since in our considered view, the point urged by the learned counsel for the petitioner that there was a delay in consideration of the representation merits acceptance.

4. From the proforma prepared by the Under Secretary to Government Home, Prohibition and Excise (IX) Department, Chennai, it is seen that the representation submitted on behalf of the detenu dated 30.09.2016 was received by the Government on 08.10.2016 and remarks were called for from the sponsoring authority on 08.10.2016. Remarks were received on 14.11.2016. In between 30.09.2016 and 14.11.2016, there were 36 clear working days and 18 Government Holidays. Thus, there is unexplained delay in considering the representation. At this juncture, this Court deems it fit to consider few decisions on the aspect of delay.

(a) In *Niranjansingh vs. State of Madhyapradesh* reported in 1972 (2) SCC 542, the Hon'ble Apex Court while emphasising the need for explaining the delay held that:

"Where there has been an inordinate delay, it is incumbent on the state to explain it and satisfy the Court that there was justification for that delay. Since the State has not filed any counter affidavit explaining why the representation of the detenu has not been expeditiously disposed of nor has it chosen to set out the various steps taken to comply with the provisions must be held to be illegal"

(b) In *Rashid sk. vs. State of West Bengal* reported in 1973 (3) SCC 476, the Hon'ble Supreme Court considered similar issue and held that any unexplained delay in disposal of the representation would be breach of constitutional imperative and it would render the continued detention impermissible and illegal, and accordingly the Hon'ble Supreme Court held as follows:

"The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion."

(c) In *Icchu Devi Choraria vs. Union of India* reported in 1980 (4) SCC 531, the Hon'ble Apex Court has held as follows:

"There is a constitutional obligation under Article 22 (5) to consider the representation of the detenu as early as possible and if there is unreasonable and unexplained delay in considering such representation, it would have the effect of invalidating the detention of the detenu".

(d) In the decisions in *Tara Chand vs. State of Rajasthan*, reported in 1980 (2) SCC 321 and in *Raghavendra Singh Vs. Superintendent, District Jail*, reported in 1986 (1) SCC 650, the Hon'ble Apex Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal.

(e) In *Mohinuddin Alias Moin Master vs. District Magistrate, Beed and others*, reported in 1987 (4) SCC 58, the Hon'ble Supreme Court held that,

"In view of the wholly unexplained and unduly long delay in the disposal of the representation by the State Government the further detention of the appellant must be held illegal. There was utter callousness on the part of the State Government to deal with the representation to the Chief Minister. There was no reason why the representation submitted by the appellant could not be dealt with by the Chief Minister with all reasonable promptitude and diligence. The explanation that he remained away from Bombay is certainly not a reasonable explanation."

(f). In *Aslam Ahmed Zahire Ahmed Shaik vs. union of India and others* reported in 1989 SCC (Cr1) 554 the Hon'ble Supreme Court held as follows:-

"The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation 11 days after it was handed over to the jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without

giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5)."

(g) In K.M.Abdulla Kunhi vs. Union of India, reported in (1991) 1 SCC 476, it has been held as follows:-

".... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

(h) In Ram Sukrya Mhatre vs. R.D.Tyagi, reported in 1992 Supp (3) SCC 65, the Hon'ble Supreme Court held thus:-

"The right to representation under Article 22 (5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India."

(i) In Rajammal vs. State of Tamil Nadu, reported in 1999 (1) SCC 417, the Hon'ble Apex Court held that the representation was received by the Secretary to the Government on 05.02.1998, the Government which received the remarks from different authorities submitted the relevant files before the under Secretary for processing it, on the next day. Thereafter, the files were submitted to the Minister, who received it on tour. Finding that there was no valid explanation for the delay from 09.02.1998 to 14.02.1998, the Hon'ble Apex Court held that the delay has vitiated the detention.

(j) In the decision in Solomon Castro vs. State of Kerala reported in 2000 (9) SCC 561, the delay between 09.04.1999 and 28.04.1999 having not been explained on justifiable grounds in disposing the representation, hence on that ground, the order of detention was quashed.

(k) In the decision in Sherene vs. The Commissioner of Police reported in 2000 (1) CTC 8, this Court accepted the ground of unexplained delay in considering the representation between 04.08.1998 and 25.09.1998, to set aside the order of detention.

(l) Again in District Collector vs. S.K.Hasmath Beevi reported in 2001 (5) SCC 401, the Hon'ble Supreme Court has held as follows:

"Article 22(5) gives the detenu the right to make a representation against an order of

detention and such right must be afforded as expeditiously as possible. In other words, the detenu must be afforded the earliest opportunity of making a representation against the order of detention. Article 22(5) in itself does not say to whom a representation could be made or who will consider the representation, but because of the language of Article 22(5) and because of the fact that an order of detention affects the liberty of a citizen, without laying down any hard and fast rule as to the measure of time taken by the appropriate authority for considering a representation, it should be considered and disposed of by the Government as soon as it is received."

(m) In *D.Karuppiiah v. The Commissioner of Police, Greater Chennai*, reported in 2004 (1) CTC 208, this Court accepted the ground of unexplained delay in considering the representation between 17.04.2002 and 04.05.2002 and the order of detention was set aside.

(n) After extracting the ratio decided in *Jayanarayan Sukul vs. State of West Bengal*, reported in 1970 (1) SCC 219, *Mahesh Kumar Chauhan alias Banti vs. Union of India* reported in 1990(3) SCC 148 and *Rama Dhondu Borade vs. V.K.Saraf, Commissioner of Police* reported in 1989 (3) SCC 173, a Division Bench of this Court in *Ramamurthy Vs.*, the State of Tamil Nadu, represented by its Secretary to Government, Prohibition and Excise Department, Fort St., George, Chennai - 600 009 and another reported in 2006 (4) CTC 181 in paragraph 4, has held as follows:

"4. In the matter of preventive detention, while dealing with Article 22(5) of the Constitution of India, the Supreme Court has laid down an ordained principle, particularly in matters where the detenu has an independent constitutional right to make his representation to the authority concerned, to whom the detenu forwards his representation to consider the same within a reasonable time limit, it is the object of Article 22(5) of the Constitution of India that the representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible. Otherwise, his continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution of India and if any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court."

(o) In Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamilnadu, Fort St. George, Chennai-9 and another, reported in 2007 (2) MWN (Cr.) 145 (DB), this Court held that an unexplained delay of three days in the disposal of the representation, made on behalf of the detenu, would be sufficient to set aside the detention order.

(p) In G.Kalaiselvi Vs. The State of Tamil Nadu, reported in 2007 (5) CTC 657, a Full Bench of this Court held that it is well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making a representation and such right of the detenu, obviously, encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay, and the result of such representation should also be communicated without any such delay.

(q) In Fathima Sudha @ Esaki Sudha v. District Collector & District Magistrate, Tirunelveli District, reported in 2008 (1) Madras Weekly Notes (Cr1) 493 (DB), delay of seven days between 14.01.2008 and 22.01.2008 in communicating the rejection of representation was held as a vitiating factor to sustain the order of detention.

(r) In Rekha Vs. State of Tamilnadu, reported in 2011 (5) SCC 244, the Hon'ble Apex Court held that the personal liberty of a person is protected, under Article 21 of the Constitution of India. As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the part of the Detaining Authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. The procedural safe guards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

(s) In Ummu Sabeena Vs. State of Kerala, reported in 2011 STPL (Web) 999 SC, the Hon'ble Supreme Court 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.

(t) In Chellaswamy v. The District Collector and District Magistrate) reported in 2011 (2) MWN (Cr1) 77 (DB), out of total delay of twelve days, five days were public holidays and remaining seven days being unexplained, the order of detention was set aside.

(u) In *Manjula vs. State* by the Commissioner of Police, reported in 2011 (3) MWN (Cr) 81 (DB), considering the above referred decisions and a decision of this Court in *Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamilnadu, Fort St. George, Chennai-9* and another, reported in 2007 (2) MWN (Cr.) 145 (DB), a Hon'ble Division Bench of this Court directed release of the detenu therein. In *Sumaiya's* case, this Court held that the unexplained delay of even three days would vitiate continued detention.

(v) In *Rashid Kapadia v. Medha Gadgil*, reported in (2012) 11 SCC 745, the Hon'ble Supreme Court at paragraph 23, held as follows:- "23. It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the authority concerned as expeditiously as possible, is a constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of judgments where the principle is discussed in detail. They are: *Mohinuddin v. District Magistrate, Beed*, (1987 (4) SCC 58 = 1987 SCC (Cri) 674) and *Harshala Santosh Patil v. State of Maharashtra* (2006 (12) SCC 211 = 2007 (1) SCC (Cri) 680."

(w) In *Tharmar vs. The State of Tamil Nadu*, reported in 2012 (3) CTC 607, a Hon'ble Division Bench of this Court after considering the decisions in *Rajammal vs. State of Tamil Nadu*, reported in 1999 AIR SCW 139, *K.M.Abdullah Kunhi and B.L. Abdul Khader vs. Union of India*, reported in 1991 (1) SCC 476 = 1991 AIR SCW 362, *Ram Sukrya Mhatre vs. R.D.Tyagi*, reported in 1992 Supp (3) SCC 65, *Aslam Ahmed Zahire Ahmed Shaik vs. Union of India and others*, reported in 1989 SCC (Crl) 554, *Tara Chand vs. State of Rajasthan*, reported in 1980 (2) SCC 321, *Rashid Sk. vs. State of West Bengal*, reported in 1973 (3) SCC 476, *Raghavendra Singh vs. Superintendent, District Jail*, reported in 1986 (1) SCC 650, and the unreported decisions made in H.C.P.No.108 of 2011, dated 09.11.2011 and H.C.P.No.1385 of 2000, dated 27.11.2010, and on the facts and circumstances of the case, held that four days delay in considering the representation, is a vitiating factor and accordingly, directed the detenu therein to be released, if not required in any other case.

(x) In *Abdul Nasar Adam Ismail v. State of Maharashtra*, reported in (2013) 4 SCC 435, after considering a catena of decisions, the Hon'ble Apex Court, finding that there was a

delay in considering the representation, held that the continued detention is illegal.

5. The reason for immediate consideration of the representation is too obvious, to be stressed the personal liberty of a person is at stake and any delay would not only be an indifferent act on the part of the Authorities, but would also be unconstitutional, violating the right enshrined under Article 22(5) of the Constitution of India of a detenu to have his representation considered with reasonable expedition. The unexplained delay in sending the remarks, in our considered view, would have the effect of vitiating the continued detention.

6. In the result, the Habeas Corpus Petition is allowed. In view of the delay in disposal of the representation of the detenu by the State Government, continued detention of the detenu is rendered illegal. We, therefore, direct that the detenu, Sakthivel, S/o.Boopathy, be released forthwith, unless his presence is required in connection with any other case.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

- 1) The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2) The Commissioner of Police,
Commissioner Office,
Vepery, Chennai 600 007.
- 3) The Superintendent,
Central Prison, Puzhal, Chennai,
- 4) The Joint secretary to Govt.,
Public (L&O) Fort St.George, Chennai.
- 5) The Public Prosecutor,
High Court, Madras.

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