

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2017

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

and

THE HON'BLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.1825 of 2016

Saritha .. Petitioner

versus

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in connection with the detention order passed by the second respondent in 845/BCDFGISSSV/2016 dated 06.08.2016 against the petitioner's friend the detenu herein now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Joseph @ Joseph Sithar Singh, son of Lalsingh Durai, aged about 26 years before this Court and set him at liberty.

For Petitioner : Mr.A.Nirmal Kumar

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

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O R D E R

[Order of the Court was made by S.NAGAMUTHU,J.]

This Habeas Corpus Petition has been filed, by the friend of the detenu, namely, Joseph @ Joseph Sithar Singh, to issue a Writ of Habeas Corpus, to call for the records connected with the detention order of the second respondent, in Memo No.845/BCDFGISSSV/2016, dated 06.08.2016 and set aside the same

and direct the respondents to produce the body and person of the petitioner's friend, by name Joseph @ Joseph Sithar Singh, son of Lalsingh Durai, aged about 26 years, detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

2. Even though, Mr.A.Nirmal Kumar, 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 29.08.2016 and remarks have been called for from the detaining authority on 29.08.2016. However, the remarks have been received by the Government only on 01.09.2016, after a delay of 3 days. He adds that the file was dealt with by the Deputy Secretary on 01.09.2016 and the Minister concerned dealt with the same on 13.10.2016 with a further delay of 41 days. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 17 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 24 days, which remains unexplained. 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, Mr.V.M.R.Rajentran, 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. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5. As per the Proforma submitted by the learned Additional Public Prosecutor, the representation of the detenu

was received by the Government on 29.08.2016 and remarks have been called for from the detaining authority on 29.08.2016. However, remarks have been received by the Government only on 01.09.2016, i.e., after a delay of 3 days and the case of the detenu was dealt with by the Deputy Secretary on 01.09.2016 and the Minister concerned dealt with the same on 13.10.2016 with a further delay of 41 days. From the above, it is clear that in between 01.09.2016 and 13.10.2016, there is a delay of 41 days. Even if we give concession to the 17 intervening holidays including Government Holidays viz., 31.08.2016; 03.09.2016; 04.09.2016; 05.09.2016; 10.09.2016; 11.09.2016; 13.09.2016; 17.09.2016; 18.09.2016; 24.09.2016; 25.09.2016; 01.10.2016; 02.10.2016; 09.10.2016; 10.10.2016; 11.10.2016; and 12.10.2016 still there is a delay of 24 days, which remain unexplained.

6. 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 24 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7. 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."

8. As per the dictum laid down by the Hon'ble 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 24 days delay has not been properly explained at all.

9. Further, in a recent decision in Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC, the Hon'ble 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.

10. In the light of the above fact and 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.

11. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 06.08.2016, passed by the second respondent is set aside. The detenu is directed to be released, forthwith, unless, his presence is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

sri

Sub Assistant Registrar

To

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

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

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

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

5.The Additional Public Prosecutor
High Court, Madras.

H.C.P.No.1825 of 2016

GJ(CO)
RS(11/04/2017)