IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.1939 of 2016

Nathiya Begum .... Petitioner

vs.

1. State of Tamil Nadu
   Rep., by its Secretary,Home,
   Prohibition & Excise Department,
   Secretariat, Chennai – 600 009

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

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in No.958/BCDFGISSSV/2016 dated 23.08.2016 and quash the same and direct the respondents to produce the detenu namely Ganesh @ Mohammed Yakab, S/o Sekar, male, aged 29 years was detained as a 'Goonda' and

lodged in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner	..	Mr.B.Nambi Selvan
For Respondents	..	Mr. V.M.R. Rajentren, Additional Public Prosecutor

O R D E R

(The order of the Court was made by **S.NAGAMUTHU.,J**)

This Habeas Corpus Petition has been filed by wife of the petitioner to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 23.08.2016 in 958/BCDFGISSSV/2016 against the detenu Ganesh @ Mohammed Yakab, S/o Sekar, male, aged 29 years and now he was confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the body of detenu before this Hon'ble Court and 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 08.09.2016 and remarks have been called for from the

detaining authority on 09.09.2016. However, the remarks have been received by the Government only on 27.09.2016, after a delay of 25 days. He adds that the file was dealt with by the Minister concerned on 04.10.2016 and the rejection letter was communicated to the detenu on 06.10.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 09 intervening holidays and there is a delay of 22 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, 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 08.09.2016 and remarks have been called for from the detaining authority on 09.09.2016. However, remarks have been received by the Government only on 27.09.2016, i.e., after a delay of 25 days and the case of the detenu was dealt with by the Minister concerned on 04.10.2016 and the same was rejected on 5.10.2016. From the above, it is clear that in between 09.09.2016 and 27.09.2016, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 25 days. There were 09 intervening holidays, but still there is a delay of 22 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 22 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 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 22 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 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 detention order dated 23.08.2016, 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.

(S.N.J.,) **(A.S.M,J.)**
10.04.2017

Speaking order/non-speaking order
Index : Yes/no
Internet : Yes/no

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To

1. The Secretary to Government,
   Home, Prohibition & Excise Dept.,
   Secretariat, Chennai – 600 009

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

3. The Public Prosecutor,High Court, Madras.

S.NAGAMUTHU,J.,
And
Dr.ANITA SUMANTH.J.,

sts

Order in
H.C.P.No.1939 of 2016

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