

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.05.2017

CORAM

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN
and

THE HONOURABLE MR. JUSTICE S. BASKARAN

H.C.P No.2340 of 2016

RafeekPetitioner (brother)

Vs

1. Government of Tamil Nadu, rep. by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St.George, Chennai - 600 009

2. The District Collector and
District Magistrate, KrishnagiriRespondents

Prayer: Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Habeas
Corpus calling for the records in S.C. No.24/2016 dated
07.09.2016 on the file of the 2nd respondent herein and
quash the same and direct the respondents herein to produce
the body of the petitioner's brother Barkath, aged 25
years, Son of Jhon Basha, now confined in Central Prison,
Salem, before this Court and set him at liberty.

For Petitioner : Mr. Subhadra Devi

For respondents: Mr.V.M.R. Rajentren,
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by M.V. MURALIDARAN, J.,)

This Habeas Corpus Petition has been filed by the
brother of the detenu, namely, Barkath, aged 25 years, Son
of Jhon Basha, to issue a Writ of Habeas Corpus, to call
for the records in S.C. No.24/2016, dated 07.09.2016 on the
file of the 2nd respondent herein and quash the same and
direct the respondents herein to produce the body of the

petitioner's brother Barkath, aged 25 years, Son of Jhon Basha, now confined in Central Prison, Salem, before this 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 25.10.2016 and the remarks have been called for from the detaining authority, on 26.10.2016. However, the remarks have been received by the Government only on 23.01.2017, after a delay of 87 days. He adds that the file was dealt with by the Minister concerned, on 27.01.2017 and the rejection letter was communicated to the detenu, on 30.01.2017. It is further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 30 intervening holidays and still there is a delay 53 days, which remains unexplained. Thus, there is a 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 has 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 submission 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 25.10.2016 and the remarks have been called for from the detaining authority

on 26.10.2016. However, remarks have been received by the Government only on 23.01.2017, i.e., after a delay of 87 days and the case of the detenu was dealt with by the Minister concerned on 27.01.2017 and the same was rejected on 30.01.2017. From the above, it is clear that in between 26.10.2016 and 23.01.2017, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 87 days. Thus, there is delay at different stages while considering the representation of the detenu. Even if we give concession to the 34 intervening holidays including Government holidays, still there is a delay of 53 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 53 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 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 53 days delay has been properly explained at all.

9. 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.

10. In the light of the above fact and law, we have no hesitation in quashing the 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 07.09.2016 passed by the second respondent is quashed. The detenu is directed to be set at liberty, unless his presence is required in connection with any other case.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. Government of Tamil Nadu, rep. by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St.George, Chennai - 600 009

2. The District Collector and
District Magistrate, Krishnagiri.

3. The Superintendent, Central Prison,
Salem.

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

5. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.R.Subadra Devi, Advocate sr.37322

H.C.P.No.2340 of 2016

sr(co)
ss(7/7/2017)