

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

and

THE HONOURABLE MR.JUSTICE **S.BASKARAN**

H.C.P.No.2586 of 2016

P.Sathiya

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary to Government (Home),
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2.The District Collector and District Magistrate,
Villupuram District, Villupuram.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus or any other order or direction in the nature of a Writ, calling for the entire records relating to the impugned order of detention passed by the second respondent in C2/26357/2016 dated 08.11.2016 and set aside the same and consequently direct the respondents to produce the detenu Pazhani @ Pazhanivel, S/o Periyasamy, aged about 35 years, petitioner's husband now confined at Central Prison, Cuddalore, before this Court and set him at Liberty forthwith.

For Petitioner : Mr.S.Saravanakumar

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

ORDER

[Order of the Court was made by **M.V.MURALIDARAN, J.**]

At the instance of the learned Additional Public Prosecutor appearing for the State, this case came up for hearing today ie. 06.06.2017 under the caption "for clarification".

2. When the matter is taken up for hearing today, the learned Additional Public Prosecutor submitted that mistakenly in view of the submission made by him to the effect that the detention order was revoked by the Advisory Board, this Court, by order dated 12.05.2017 has already dismissed this petition as infructuous. But, the detention order dated 08.11.2016 was confirmed by the Government. In support of his contention, he has produced the proceedings dated 19.12.2016 before this Court, wherein the Advisory Board had given its opinion that there is sufficient cause for the detention of the detenu Pazhani @ Pazhanivel. Therefore, the learned Additional Public Prosecutor has brought this petition before this Court under the heading "for clarification".

3. In view of the above submission made by the learned Additional Public Prosecutor, the order of this Court dated 12.05.2017 is recalled and this matter is taken up for hearing on merits.

4. Heard the learned counsel on either side and perused the materials available on record.

5. 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 07.12.2016 and the remarks have been called for from the detaining authority, on 07.12.2016. However, the remarks have been received by the Government only on 15.12.2016 after a delay of 8 days. He adds that the file was dealt with by the Minister concerned, on 24.12.2016 and the rejection letter was communicated to the detenu, on 27.12.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 8 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 5 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**.

6. 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.

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

8. As per the Proforma submitted by the learned Additional Public Prosecutor, the representation of the detenu was received by the Government on 07.12.2016 and the remarks have been called for from the detaining authority on 07.12.2016. However, remarks have been received by the Government only on 15.12.2016, i.e., after a delay of 8 days and the case of the detenu was dealt with by the Minister concerned on 24.12.2016 and the same was rejected on 26.12.2016. From the above, it is clear that in between 07.12.2016 and 15.12.2016, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 8 days. Thus, there is delay at different stages while considering the representation of the detenu. Even if we give concession to the 8 intervening holidays including Government holidays, still there is a delay of 5 days, which remain unexplained.

9. 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 5 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

10. 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."

11. As per the dictum laid down by the Hon'ble Supreme Court in the 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 5 days delay has not been properly explained at all.

12. Further, in a decision in ***Ummu Sabeena vs. State of Kerala*** reported in ***(2011) 10 SCC 781***, 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.

13. 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.

14. Accordingly, the habeas corpus petition is allowed and the detention order dated 08.11.2016 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.

[M.V.M. J.] [S.B.J.,]

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Index : Yes/No

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