

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.05.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and
THE HONOURABLE JUSTICE S.BASKARAN

H.C.P.No.2617 of 2016

Kumar Petitioner

vs.

1. The State rep by its
Secretary of Tamilnadu,
Home, Prohibition & Excise Dept,
Secretariat, Chennai - 600 009
 2. The Commissioner of Police,
Office of the Commissioner of Police,
Salem City
- Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the detention order of the 2nd respondent in C.M.P.No.80/GOONDA/SALEM CITY/2016 dated 03.11.2016 against the son of the petitioner, Detenu Gopi, S/o.Kumar, who is confined at Central Prison, Salem and to set aside the same and consequently, direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner .. Mr. A.Gokulakrishnan

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

O R D E R

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

This Habeas Corpus Petition has been filed by the father of the detenu to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order of the 2nd respondent in

C.M.P.No.80/GOONDA/SALEM CITY/2016 dated 03.11.2016 against the son of the petitioner, Detenu Gopi, S/o.Kumar, who is confined at Central Prison, Salem and to set aside the same and consequently, direct the respondents to produce the detenu before the 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 08.12.2016 and remarks have been called for from the detaining authority on 08.12.2016. However, the remarks have been received by the Government only on 16.12.2016, after a delay of 8 days. However, though the Deputy Secretary dealt with on 16.12.2016, the file was dealt with by the Minister concerned only on 19.01.2017, after a delay of 34 days and the rejection letter was communicated to the detenu on 20.01.2017. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 13 intervening holidays and there is a delay of 28 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 08.12.2016 and remarks have been called for from the detaining authority on 08.12.2016. However, remarks have been received by the Government only on 16.12.2016, i.e.,

after a delay of 8 days and the case of the detenu was dealt with by the Minister concerned on 19.01.2017 and the same was rejected on 23.01.2017. From the above, it is clear that in between 08.12.2016 to 30.01.2017, [i.e., the intermittent days between the remarks called for and consideration by the Minister concerned] there is a delay of 41 days. There were intervening holidays, but still there is a delay of 28 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 28 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 28 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 03.11.2016, 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition & Excise Dept,
Secretariat, Chennai - 600 009
2. The Commissioner of Police,
Office of the Commissioner of Police,
Salem City.
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, Madras.

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BR(CO)
RS(28/06/2017)