

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 MR.JUSTICE S.BASKARAN

H.C.P.No.2636 of 2016

Karthik

.... Petitioner

vs.

1. The State of Tamilnadu,  
Rep by The Secretary,  
Home, Prohibition & Excise Dept,  
Fort St. George, Chennai - 600 009

2. The Commissioner of Police,  
The Commissioner Office,  
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 records relating to the detention order in Memo No.1157/BCDFGISSSV/2016, dated 14.11.2016 passed by the 2<sup>nd</sup> respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's friend SHANMUGASUNDARAM @ SHANMUGAM, S/o Natesan, aged about 25 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's friend SHANMUGASUNDARAM @ SHANMUGAM, S/o Natesan, aged about 25 years the detenu herein at liberty. (Amended as per order of this Court dated 24.05.2017 in CrI.M.P.No.6656 of 2017)

For Petitioner

.. Mr.U.Yuvaraj

For Respondents

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

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O R D E R

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

The petitioner, who is the friend of the detenu Shanmugasundaram @ Shanmugam, has come up with this habeas corpus petition, challenging the detention order passed against the detenu by the second respondent, vide Memo No.1157/BCDFGISSSV/2016, dated 14.11.2016.

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. According to the learned counsel for the petitioner, the representation of the petitioner has been received by the Government on 14.12.2016 and remarks have been called for from the detaining authority on the same date. However, the remarks have been received by the Government only on 21.12.2016, after a delay of 7 days. He adds that the file was submitted on 21.12.2016 and though the Under Secretary and Deputy Secretary dealt with the file on 21.12.2016 itself, the file was dealt with by the Minister concerned on 24.12.2016, after a delay of 3 days. Further, the rejection letter was prepared and communicated to the detenu only on 26.12.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 5 intervening holidays and there is a delay of 10 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 petitioner was received by the Government on 14.12.2016 and remarks have been called for from the detaining authority the same date. However, remarks have been received by the Government only on 21.12.2016, i.e., after a delay of 7 days. Further, though the file was submitted on 21.12.2016 and the Under Secretary and Deputy Secretary dealt with the file on 21.12.2016 itself, the file was dealt with by the Minister concerned on 24.12.2016, after a delay of 3 days. From the above, it is clear that in

between 14.12.2016 and 21.12.2016, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 7 days. Further, between 21.12.2016 and 24.12.2016 (i.e., the intermittent days between the submission of file and the Ministry dealt with the file), there is a delay of 3 days. There were 5 intervening holidays, but still there is a delay of 10 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 15 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 10 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 14.11.2016, passed by the second respondent is quashed. The detainee is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case.

Sd/-  
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.

The Secretary,  
The State of Tamilnadu,  
Home, Prohibition & Excise Dept,  
Fort St. George, Chennai - 600 009

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

3. The Superintendent,  
Central Prison,  
Puzhal, Chennai

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

5. The Additional Public Prosecutor,  
High Court, Madras.

सत्यमेव जयते

H.C.P.No.2636 of 2016

SKV(CO)  
NR(15/06/2017)

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