IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.2675 of 2016

Deepa .... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,Chennai - 600 009.

2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.

3. The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs)
Room No.270, Krishi Bhawan,
New Delhi - 110 001. .... Respondents

WEB COPY

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 C.No.04/PBMMSEC Act/IS/2016 dated 15.12.2016 and quash the same and direct the respondents to produce the body and person of petitioner's husband namely S.Babu, S/o Subramani, male, aged 38 years was detained as a 'Goonda' and lodged in Central Prison, Coimbatore before this Court and set him at liberty.

https://hcservices.ecourts.gov.in/hcservices/

For Petitioner ..Mr.W.Camyles Gandhi
For Respondents 1 & 2 ..Mr. V.M.R. Rajentren, Additional Public Prosecutor
For Respondent 3 ..Mr.S.Arockiam

O R D E R

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

This Habeas Corpus Petition has been filed by the 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 15.12.2016 in C.No.04/PBMMSEC Act/IS/2016 against the petitioner's husband S.Babu, S/o Subramani, male, aged 38 years and now he was confined at Central Prison, Coimbatore 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 20.12.2016 and remarks have been called for from the detaining authority on 22.12.2016. However, the remarks have been received by the Government only on 29.12.2016, after a delay of 07 days. He adds that the file was dealt with by the Minister concerned on 05.01.2017 and the rejection letter was communicated to the detenu on 09.01.2017. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 02 intervening holidays and there is a delay of 05 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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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 20.12.2016 and remarks have been called for from the detaining authority on 22.12.2016. However, remarks have been received by the Government only on 29.12.2016, i.e., after a delay of 07 days and the case of the detenu was dealt with by the Minister concerned on 05.01.2017 and the same was rejected on 05.01.2017. From the above, it is clear that in between 22.12.2016 and 29.12.2016, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 07 days. There were 02 intervening holidays, but still there is a delay of 05 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 05 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 05 days delay has not been properly explained at all.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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 15.12.2016, 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 (CCC)

//True Copy//

Sub Assistant Registrar

msk/jer
To

1. The Secretary to Government,
   State of Tamil Nadu,
   Home, Prohibition and Excise Department,
   Secretariat,Chennai - 600 009.

2.The Commissioner of Police/
   Detaining Authority,
   Coimbatore City,
   Coimbatore District.

3. The Additional Secretary,
   Government of India,
   Ministry of Consumer Affairs,
   Food and Public Distribution,
   (Dept. of Consumer Affairs)
   Room No.270, Krishi Bhawan,
   New Delhi - 110 001.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Public Prosecutor,
   High Court, Madras.

5. The Superintendent,
   Central Prison,
   Coimbatore.

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

+1cc to Mr.S.Arockiam, Advocate Sr.20072

H.C.P.No.2675 of 2016

pa[co]
srg 19/04/2017

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/