

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM  
and  
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.401/2017 & CrI.MP.No.3075/2018

Ramakrishnan

..

Petitioner

vs.

1.The Principal Secretary to Government,  
Home, Prohibition & Excise Department  
Fort St George, Chennai-9.

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

3.The Superintendent  
Central Prison,  
Cuddalore Post & District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to produce the corpus of the detenu namely Manoharan, son of Thiru.Rathinam, aged 55 years who is detained at Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.D.Veerasekaran

For RR1 to 3 : Mr.R.Prathap Kumar, APP

ORDER

(Order of the Court was made by C.T.SELVAM, J.)

Petitioner, cousin of the detenu Manoharan, son of Rathinam, aged 55 years has filed the present petition seeking production of the detenu, said to be under illegal detention of respondents, before this Court and to set him at liberty.

2 Earlier, Habeas Corpus Petition in HCP.No.2096/2017 filed by son-in-law of detenu seeking to quash the detention order dated 21.10.2017, came to be closed by this Court under order dated 21.12.2017, on an erroneous representation on the part of respondents informing that the order under challenge,

was revoked by the Advisory Board. On perusal of papers we find that the said Revocation Order pertain to some other detenu and not the detenu in the instant case. Therefore, detenu was sought to be detained in prison. However, the present petition came to be filed on the ground of illegal detention of detenu by the respondents.

3 A perusal of the Detention order shows that the same was passed by the District Collector and District Magistrate, Villupuram District ; but the 2<sup>nd</sup> respondent in the present petition is shown as the District Magistrate and District Collector, Cuddalore District. It is the duty of the learned counsel for petitioner to cause due verification before filing of the matter and without causing due and proper verification, petitioner cannot seek compensation for the illegal custody of detenu. Hence, this Court is not inclined to impose an order of cost against respondents. However, on merits, we proceed to consider and pass orders on the detention order dated 21.10.2017 passed by the District Magistrate and the District Collector, Villupuram District, 2<sup>nd</sup> respondent herein.

4 Permission was also given to learned counsel on record to make corrections in the cause title as to name of the District, both in petition as well as in affidavit [including the miscellaneous petition].

5 Vide Detention Order dated 21.10.2017, detenu was branded as a "Bootlegger" as contemplated u/s.2[b] of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

6 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, dated 20.11.2017. According to the learned counsel for the petitioner, the representation, dated 20.11.2017 has been received by the Government on 29.11.2017 ; the remarks were called on the same day. But the said remarks were received only on 07.12.2017, after a delay of 8 days. He adds that though the file was submitted to the Under Secretary on 08.12.2017, the Minister has dealt with the said file of the detenu only on 15.12.2017 with a further delay of 7 days and the rejection letter was prepared on 18.12.2017 and sent to the detenu on 19.12.2017. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 4 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 11 days in considering the representation, 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.

7 Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 29.11.2017 and that was forwarded to the Detaining Authority, calling for remarks on the same day itself and remarks were received by the Government on 07.12.2017 and ultimately, the representation was considered and rejected on 18.12.2017 and the result of the consideration was communicated to the detenu on 19.12.2017 itself. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

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

9 As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 20.11.2017 which was received by the Government on 29.11.2017, remarks have been called for from the detaining authority on the same day itself, i.e., on 29.11.2017. But, remarks have been received by the Government only on 07.12.2017 and the case of the detenu was dealt with by the Minister on 15.12.2017, i.e., after a total delay of 15 days and thereafter, the representation has been considered by the authorities concerned and rejected on 18.12.2017 and the Rejection letter was sent to the detenu on 19.12.2017. From the above, it is clear that in between 29.11.2017 and 07.12.2017 [period between remarks called for and remarks received] and in between 08.12.2017 and 15.12.2017 [the period between the file dealt with by the Under Secretary and the Minister concerned], there is a total delay of 15 days. Even if we give concession to the intervening holidays, namely 02.12.2017 ; 03.12.2017 ; 09.12.2017 and 10.12.2017, still there is a delay of 11 days, which remain unexplained.

10 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 11 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

11 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."

12 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 11 days delay has not been properly explained at all.

13 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 the inordinate delay of 11 days in total, has not been properly explained at all.

14 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.

15 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.

16 Accordingly, the habeas corpus petition is allowed and the detention order passed by the 2nd 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(CS IX)

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Sub Assistant Registrar

AP

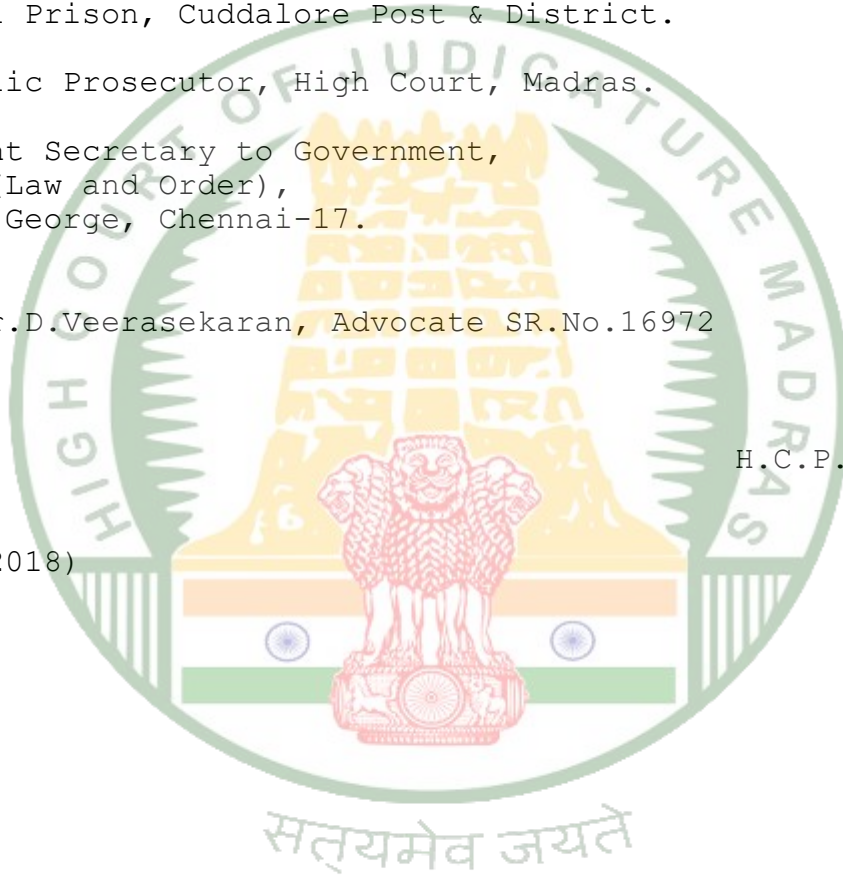
To

- 1.The Principal Secretary to Government,  
Home, Prohibition & Excise Department  
Fort St George, Chennai-9.
- 2.The District Magistrate & District Collector  
Villupuram District, Villupuram.
- 3.The Superintendent  
Central Prison, Cuddalore Post & District.
- 4.The Public Prosecutor, High Court, Madras.
- 5.The Joint Secretary to Government,  
Public (Law and Order),  
Fort St.George, Chennai-17.

+1cc to Mr.D.Veerasekaran, Advocate SR.No.16972

H.C.P.No.401/2018

GP(CO)  
GN(28/03/2018)



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