

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.No.2070/2017

G.Vasantha

.. Petitioner

vs.

1.The Inspector of Police
Anchetty Police Station
Krishnagiri District.

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

3.The Secretary to Government
Home, Prohibition & Excise Department
Chennai-9.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the petitioner's brother S.Seshathiri son of Sanjeevan, male, aged 38 years detained under Act 14/82 vide order TDPA No.5065 dated 12.09.2017 and now confined at Central Prison, Salem, before this Court and set him at liberty forthwith by calling for the records and setting aside the order of detention bearing SCNo.59/2017 dated 11.09.2017 on the file of the District Collector and District Magistrate, Krishnagiri District, Krishnagiri.

For Petitioner : Mr.M.Ganesh

For Respondents: Mr.R.Prathap Kumar, APP

ORDER

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

Petitioner, sister of detenu herein, has filed this Petition challenging the order of detention passed by the 2nd respondent in SC.No.59/2017 dated 11.09.2017, branding her brother as a "Sexual Offender" as contemplated u/s.2[ggg] 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].

2 As per the grounds of detention dated 11.09.2017, passed by the second respondent, the detenu came to adverse notice in the following cases:

Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Anchetty Police Station Cr.No.70/2017	302 IPC

3 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 23.10.2017. According to the learned counsel for the petitioner, the representation, dated 23.10.2017 has been received by the Government on 24.10.2017 ; the remarks were called on the same day. But the said remarks were received only on 24.11.2017, after a delay of 31 days. He adds that though the file was submitted to the Under Secretary on 27.11.2017, the Minister has dealt with the said file of the detenu only on 18.12.2017 with a further delay of 21 days and the rejection letter was prepared only on 18.12.2017 and sent to the detenu on the next day. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 14 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 38 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.

4. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 24.10.2017 and that was forwarded to the Detaining Authority, calling for remarks on the same day itself and remarks were received by the Government on 24.11.2017 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.

5.We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record including the counter filed by the respondents.

6.As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 23.10.2017 which was received by the Government on 24.10.2017, remarks have been called for from the detaining authority on the same day itself, i.e., on 24.10.2017. But, remarks have been received by the Government only on 24.11.2017 and the case of the detenu was dealt with by the Minister on 18.12.2017, i.e., after a total delay of 52 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 24.10.2017 and 24.11.2017 [period between remarks called for and remarks received], there was a delay of 31 days and in between 27.11.2017 and 18.12.2017 [period between the file dealt with by the Under Secretary and the Minister concerned], there is a further delay of 21 days. Even if we give concession to the intervening holidays, namely 28.10.2017 ; 29.10.2017 ; 04.11.2017 ; 05.11.2017 ; 11.11.2017 ; 12.11.2017 ; 18.11.2017 ; 19.11.2017 ; 02.12.2017 ; 03.12.2017 ; 09.12.2017 ; 10.12.2017 ; 16.12.2017 ; and 17.12.2017, still there is a delay of 38 days, which remain unexplained.

7.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 38 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

8.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."

9..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 38 days delay has not been properly explained at all.

10.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 38 days in total, has not been properly explained at all.

11.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.

12.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.

13.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.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registra

To

1. The Secretary to Government
Home, Prohibition & Excise Department
Chennai-9.
2. The District Collector and District Magistrate
Krishnagiri District, Krishnagiri.
3. The Joint Secretary to Government
Public (Law and order), Fort. St. George
Chennai 9.

4.The Superintendent,
Central Prison, Salem.

5.The Inspector of Police
Anchetty Police Station
Krishnagiri District.

6.The Public Prosecutor, High Court, Madras.

+1 CC to Mr.M. Ganesh, Advocate sr 17951.

H.C.P.No.2070/2017

MP (CO)
SP (26/03/2018)



WEB COPY