

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

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

H.C.P.No.2325/2017

Shahin

..Petitioner

vs.

1. The Secretary to Government,
State of Tamil Nadu
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.

2. The District Collector and District Magistrate
Vellore District, Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order in C3.D.O.No.92/2017 dated 11.09.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Mohammed Musthaque, son of Mohammed Ishaque, aged about 22 years now confined at Central Prison, Vellore before this Court and set him at liberty.

For petitioner : Mr.Ilayaraja Kandasamy

For RR1 & 2 : Mr.V.M.R.Rajentren, APP

O R D E R

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

Petitioner, mother of the detenu, Mohammed Musthaque, son of Mohammed Ishaque, has filed this Petition challenging the order of detention passed by the 2nd respondent in C3.D.O.No.92/2017 dated 11.09.2017, branding the detenu as a "Goonda" as contemplated u/s.2[f] 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.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 22.12.2017. According to the learned counsel for the petitioner, the representation, dated 22.12.2017 has been received by the Government on 26.12.2017 and though the remarks were called on 26.12.2017 ; the said remarks were received only on 02.01.2018, after a delay of 7 days. He adds that though the file was submitted to the Under Secretary on the same day, i.e., on 02.01.2018, the Minister has dealt with the said file of the detenu only on 12.01.2018 with a further delay of 10 days and the rejection letter was prepared and sent to the detenu on 12.01.2018. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 5 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 12 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.

3. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 26.12.2017 and that was forwarded to the Detaining Authority, calling for remarks on 26.12.2017 ; but the remarks were received by the Government only on 02.01.2018 and ultimately, the representation was considered and rejected on 12.01.2018 and the result of the consideration was communicated to the detenu on 12.01.2018 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.

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, on the representation of the detenu, dated 22.12.2017 which was received by the Government on 26.12.2017, remarks have been called for from the detaining authority on the same day and the same have been received by the Government only on 02.01.2018 and the case of the detenu was dealt with by the Minister only on 12.01.2018, i.e., after a total delay of 24 days and thereafter, the representation has been considered by the authorities concerned and rejected on 12.01.2018. From the above, it is clear that in between 26.12.2017 and 02.01.2018 [period between remarks called for and remarks received], there is a delay of 7 days and in between 02.01.2018 and 12.01.2018

[i.e., the period between the file submitted to the Department concerned ; dealing of the same by the Minister and passing of the rejection letter], there is a further delay of 10 days. Even if we give concession to the 5 intervening holidays, namely 30.12.2017 ; 31.12.2017 ; 01.01.2018 ; 06.01.2018 and 07.01.2018, still there is a delay of 12 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 12 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 12 days delay has not been properly explained at all.

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 the inordinate delay of 12 days in total, has not been properly explained at all.

10.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.

11.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.

12.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

True Copy

Sub-Assistant Registrar

AP

To

1. The Secretary to Government,
State of Tamil Nadu
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.
2. The District Collector and District Magistrate
Vellore District, Vellore
3. The Superintendent, Central Prison
Vellore.
4. The Joint Secretary to Government
Public(Law and order)
Fort. st. George
Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

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GMI (CO)
SP(14/02/2018)