

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.No.2375/2017

Mubarak Kani

.. Petitioner

vs.

1.The Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai City, Vepery.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent dated 18.11.2017 in Memo.No.736/BCDFGISSSV/2017 against the petitioner son Asaruthin @ Asar, Male, aged 25 years, son of Mubarak Kani, who is confined at Central Prison, Puzhal, Chennai, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For petitioner : Mr.D.Gopi Krishnan

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

ORDER

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

Petitioner, father of detenu herein, has filed this Petition challenging the order of detention passed by the 2nd respondent in memo No.736/BCDFGISSSV/2017 dated 18.11.2017, branding his son 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 11.12.2017. According to the learned counsel for the petitioner, the representation, dated 11.12.2017 has been received by the Government on 12.12.2017 ; the remarks were called on the same day. But the said remarks were received only on 18.12.2017, after a delay of 6 days. He adds that though the file was submitted to the Under Secretary on the next day, i.e., on 19.12.2017, the Minister has dealt with the said file of the detenu only on 21.12.2017, with a further delay of 2 days and the rejection letter was prepared on 22.12.2017 and sent to the detenu on 22.12.2017. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 2 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 6 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 12.12.2017 and that was forwarded to the Detaining Authority, calling for remarks on the same day itself and remarks were received by the Government on 18.12.2017 and ultimately, the representation was considered and rejected on 21.12.2017 and the result of the consideration was communicated to the detenu on 22.12.2017 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.

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 11.12.2017 which was received by the Government on 12.12.2017, remarks have been called for from the detaining authority on the same day itself, i.e., on 12.12.2017. But, remarks have been received by the Government only on 18.12.2017 and the case of the detenu was dealt with by the Minister only on 21.12.2017, i.e., after a total delay of 8 days and thereafter, the representation has been considered by the authorities concerned and rejected on 22.12.2017 and the Rejection letter was sent to the detenu on 22.12.2017. From the above, it is clear that in

between 12.12.2017 and 18.12.2017 [period between remarks called for and remarks received], there is a delay of 6 days and in between 19.12.2017 and 21.12.2017 [i.e., the period between the file submitted to the Department concerned and dealing of the same by the Minister], there is a further delay of 2 days. Even if we give concession to the 2 intervening holidays, namely 16.12.2017 and 17.12.2017, still there is a delay of 6 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 6 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 6 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 6 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.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

AP

To

1. THE SECRETARY TO THE GOVERNMENT,
HOME, PROHIBITION & EXCISE DEPARTMENT
SECRETARIAT, CHENNAI 600 009.
2. THE COMMISSIONER OF POLICE
GREATER CHENNAI CITY, VEPERY.
3. THE SUPERINTENDENT
CENTRAL PRISON, PUZHAI, CHENNAI.
(IN DUPLICATE FOR COMMUNICATION TO DETENUE)
4. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.
5. THE JOINT SECRETARY TO GOVERNMENT,
PUBLIC, LAW & ORDER DEPARTMENT,
SECRETARIAT, CHENNAI - 9.

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LRS (CO)
TR(05/03/2018)