

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2475/2017

Mr.Manikandan

..

Petitioner

vs.

1.The State of Tamil Nadu rep by its
Secretary to Government, Home, Prohibition &
Excise Department,
Fort St George, Chennai-600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records of the Commissioner of Police, Salem District, the 2nd respondent pertaining to the order made in CMP.No.51/Goonda/C2/2017 dated on 22.09.2017 before this Court and set the detenu Thiru Samidurai son of Ayyandurai, aged about 23 years who is detained in Central Prison, Salem at liberty forthwith.

For Petitioner : Mr.M.Mohammed Sathik

For RR1 & 2 : Mr.R.Prathap Kumar, APP

ORDER

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

Petitioner, brother of the detenu herein, has filed this Petition challenging the order of detention passed by the 2nd respondent in CMP.No.51/Goonda/C2/2017 dated 22.09.2017, branding him 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 As per the grounds of detention dated 22.09.2017, passed by the second respondent, the detenu came to adverse notice in the following cases:

Adverse Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Mecheri PS Cr.No.139/2016	379 IPC
2	Nangavalli PS Cr.No.153/2017	380 IPC
3	Nangavalli PS Cr.No.154/2017	380 IPC

Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Nangavalli PS Cr.No.156/2017	392 r/w 397 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 28.11.2017. According to the learned counsel for the petitioner, the representation, dated 28.11.2017, has been received by the Government on 29.11.2017 ; the remarks were called on the same day, i.e., 29.11.2017. But the said remarks were received only on 30.01.2018, after a delay of 62 days. He adds that the file was submitted to the Under Secretary on 30.01.2018 and the Minister has dealt with the said file of the detenu on the same day and the rejection letter was prepared only on 31.01.2018 and sent to the detenu on the next day, i.e., on 01.02.2018. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 22 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 40 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 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 30.01.2018 and ultimately, the representation was considered and rejected on 31.01.2018 and the result of the consideration was communicated to the detenu on 01.02.2018 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.

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

6. As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 28.11.2017 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 30.01.2018 and the case of the detenu was dealt with by the Minister on 30.01.2018, i.e., after a total delay of 62 days and thereafter, the representation has been considered by the authorities concerned and rejected on 31.01.2018 and the Rejection letter was sent to the detenu on 01.02.2018. From the above, it is clear that in between 29.11.2017 and 30.01.2018 [period between remarks called for and remarks received] there is an enormous delay of 62 days. Even if we give concession to the intervening holidays, namely 02.12.2017 ; 03.12.2017 ; 09.12.2017 ; 10.12.2017 ; 16.12.2017 ; 17.12.2017 ; 23.12.2017 ; 24.12.2017 ; 25.12.2017 ; 30.12.2017 ; 31.12.2017 ; 01.01.2018 ; 06.01.2018 ; 07.01.2018, 13.01.2018 ; 14.01.2018 ; 15.01.2018 ; 16.01.2018 ; 20.01.2018 ; 21.01.2018 ; 27.01.2018 and 28.01.2018, still there is a delay of 40 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 40 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 40 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 40 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.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

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

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

3.The Superintendent,
Central Prison, Salem.

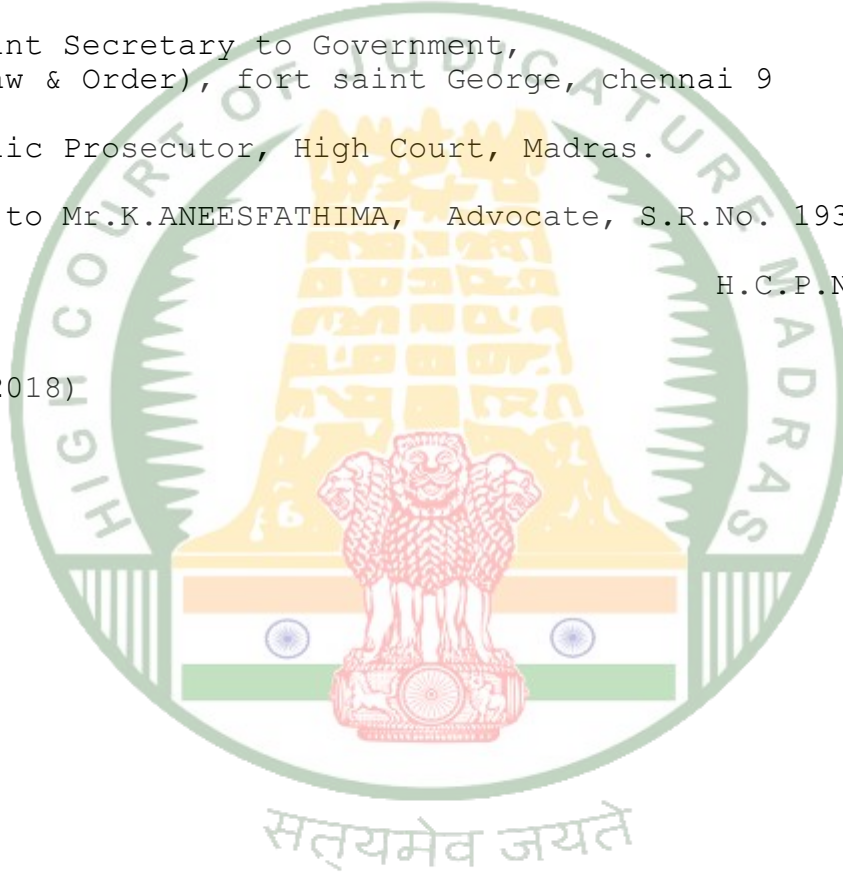
4. The Joint Secretary to Government,
Public (law & Order), fort saint George, Chennai 9

5.The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.ANEESFATHIMA, Advocate, S.R.No. 19375

H.C.P.No.2475/2017

BR(CO)
TR(10/04/2018)



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