



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.09.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P. (MD)No.225 of 2019

S.Mohamed Fathima : Petitioner
Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed by the second respondent in Detention Order in No.M.H.S.Confdl No.19/2019 dated 14.02.2019 and quash the same and direct the respondents to produce the body or person of the detenu, namely, Sheikmydeen @ Jeemmakhan, son of Samsudeen, aged 47 years, who is detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

This Habeas Corpus Petition is directed against the detention order of the second respondent No.M.H.S.Confdl No.19/2019 dated 14.02.2019.



2. The only ground that was raised by the learned counsel for the Petitioner is with regard to the delay in considering the representation made by the detenu.

3. The learned counsel for the Petitioner submitted that the representation was made on 22.02.2019 and it was received on 04.03.2019 by the concerned Department. The remarks were called for on the same day and it was received on 13.03.2019. Thereafter, the file was submitted to the Under Secretary on the same day. The Under Secretary had passed the file to the Deputy Secretary on the same day and he kept the file till 30.04.2019 for nearly 46 days. The representation was rejected on 02.05.2019 and it was communicated to the detenu on 03.05.2019. The learned counsel for the Petitioner by pointing out the above chronology of events, submitted that there is an unexplained delay of 46 days in considering the representation and the said delay has not been explained and therefore, the Detention Order is vitiated by the unexplained delay.

4. From the above chronology of events, it is seen that there is a delay of nearly 46 days while the Deputy Secretary was considering the file after it was sent by the Under Secretary. Out of this 46 days, explanation was given only for 17 days which happens to be Government holidays. For the balance 29 days, there is absolutely no explanation as to why there was a delay in considering the representation.

5. At this juncture, it will be relevant to rely upon the judgment cited by the learned counsel for the Petitioner in ***Rajammal vs.State of Tamil Nadu and another reported in (1999) 1 Supreme Court Cases, 417.***

6. The relevant portions in the judgment is extracted hereunder:

''7. 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. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in ***K. M. Abdulla Kunbi .vs. Union of India.*** The following



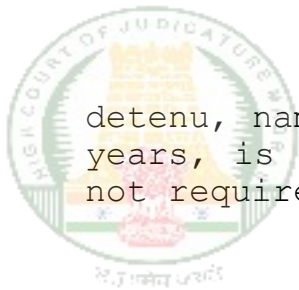
observations of the Bench can profitably be extracted here (SCC Page.484 para 12)

"It is a constitutional mandate commanding the authority concerned to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words 'as soon as may be' occurring in clause(5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without any unavoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which, the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal'".

8.The position, therefore, now is that if delay was caused on account of any differences or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation.. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.'"

7. It is clear from the above judgment that unexplained delay in disposing of the representation would be a breach of the statutory mandate and it would render the continued detention impermissible. The Judgment of the Honourable Supreme Court will squarely apply to the facts of the present case. There is absolutely no explanation with regard to the delay of 29 days mentioned herein above and therefore, this Court finds that there has been a supine indifference and slackness in considering the representation which defeats the constitutional right granted to the detenu under Article 22 of the Constitution of India.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order in No.M.H.S.Confdl No.19/2019, passed by the second respondent is set aside. The



detenu, namely, Sheikmydeen @ Jeemmakhan, son of Samsudeen, aged 47 years, is directed to be released forthwith unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort. St. George,
Chennai - 600 009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD)No.225 of 2019
04.09.2019

pjl

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