



HCP.No.1010/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1010/2023

Harisha

..

Petitioner

vs.

1.State of Tamil Nadu

represented by its Secretary

Home, Prohibition & Excise Department

Fort St George, Chennai 600 009.

2.The District Collector and District Magistrate
of Tirupattur, Tirupattur District.

3.The Superintendent of Police
Tirupattur.

4.The Superintendent of Prison
Central Prison, Vellore.

5.The Inspector of Police
Jolarpet Police Station
Tirupattur District.

..

Respondents



HCP.No.1010/2023

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records of the detention order in C3/D.O./10/2023 dated 23.05.2032 on the file of the 2nd respondent and quash the same and produce the body of the petitioner husband Thiru.Ilavarasan, [Male] S/o.Anandan, aged about 31 years, confined at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.S.Prabakar
For Respondents : Mr.E.Raj Thilak, APP

ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

(1)The Petitioner, wife of the detenu Ilavarasan, son of Anandan, aged 31 years, has filed this Petition challenging the order of detention passed by the 2nd respondent against her husband, in C3 D.O.No.10/2023 dated 23.05.2023, branding the detenu as a "Bootlegger" under Section 3[1] 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.



HCP.No.1010/2023

(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 27.05.2023. According to the learned counsel for the petitioner, though the representation, dated 27.05.2023, the same has been received by the Government only on 28.06.2023 ; the file has been dealt with by the Deputy Secretary on 30.06.2023 and the Minister concerned dealt with the file only on 11.07.2023 and the Rejection Letter prepared on 12.07.2023 was sent to the detenu on 13.07.2023. It is the further submission of the learned counsel that this inordinate delay in considering the representation remains unexplained and the same vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in *Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417*.

(3) Heard the learned Additional Public Prosecutor appearing for the respondents.



HCP.No.1010/2023

WEB COPY

(4)As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that, on the representation of the detenu, dated 27.05.2023, which was received by the Government only on 28.06.2023 and further, the Minister concerned had dealt with the file of the detenu only on 11.07.2023 and the Rejection Letter was prepared on 12.07.2023. Thus, we find there is a considerable delay in considering the representation of the petitioner. This inordinate delay in considering the detenu's representation remain unexplained.

(5)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 inordinate delay. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

(6)In the judgment of the Hon'ble Supreme Court in ***Rajammal's case*** (*cited supra*), it has been held as follows:



HCP.No.1010/2023

"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."

(7)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 from 30.06.2023 till 11.07.2023, has not been properly explained at all.

(8)Further, in a recent decision in **Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC**, the Hon'ble 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



HCP.No.1010/2023

WEB COPY

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.

(9)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.

(10)Accordingly, the habeas corpus petition is allowed and the detention order in C3.D.O.No.10/2023 dated 23.05.2023, passed by the 2nd respondent is quashed. The detenu Ilavarasan, S/o.Anandan, is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

[SSSRJ] [SMJ]

11.10.2023

AP



WEB COPY



HCP.No.1010/2023

To

- 1.The Secretary
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The District Collector and District Magistrate
of Tirupattur, Tirupattur District.
- 3.The Superintendent of Police
Tirupattur.
- 4.The Superintendent of Prison
Central Prison, Vellore.
- 5.The Inspector of Police
Jolarpet Police Station
Tirupattur District.
- 6.The Public Prosecutor,
High Court, Madras



WEB COPY



HCP.No.1010/2023

S.S.SUNDAR,J.
AND
SUNDER MOHAN, J.

AP

H.C.P.No.1010/2023

11.10.2023