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HCP.No.1640/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1640/2023

Shanthi

..

Petitioner

vs.

1.State of Tamil Nadu
rep.by its Additional Chief Secretary
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai 600 007.

3.The Inspector of Police
G5 Secretariat Colony Police Station
Chennai.

4.The Superintendent of Prison
Central Prison-II
Puzhal, Chennai 600 066.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Habeas Corpus calling for the records relating to



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the detention order passed in Memo No.311/BCDFGISSSV/2023 dated 12.07.2023 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Thiru Surya @ Kavamedu Surya, son of Saravanan, aged about 24 years the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Thiru Surya @ Kavamedu Surya son of Saravanan, aged about 24 years the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar
For Respondents : Mr.E.Raj Thilak, APP assisted by
Mr.Aravind C.

ORDER

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

- (1)The Petitioner, mother of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent against her son, in No.311/BCDFGISSSV/2023 dated 12.07.2023, branding the detenu as a "Goonda" under the 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 07.08.2023. According to the learned counsel for the petitioner, though the representation dated 07.08.2023,



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was received by the Government on 09.08.2023 ; and though the file has been dealt with by the Deputy Secretary on 10.08.2023, the Minister concerned dealt with the file only on 17.08.2023 and the Rejection Letter prepared on 17.08.2023 was sent to the detenu on the same day. 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.

(4) As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that, the representation of the detenu, dated 07.08.2023, which was received by the Government on 09.08.2023, was dealt with by the Minister concerned only on 17.08.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a considerable delay of four days [after excluding the intervening Saturday and Sunday and Public Holiday [12.08.2023, 13.08.2023 and



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15.08.2023] 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:

"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."



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(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 10.08.2023 to 17.08.2023, 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 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 No.311/BCDFGISSSV/2023 dated 12.07.2023, passed by the



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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.

[SSSRJ] [SMJ]
05.12.2023

AP

Internet : Yes

To

- 1.The Additional Chief Secretary
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- 2.The Commissioner of Police
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S.S.SUNDAR,J.
AND
SUNDER MOHAN, J.

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