



WEB COPY



HCP.No.1690/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1690/2023

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Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Chennai.

3.The Superintendent
Central Prison, Puzhal, Chennai.

4.State rep.by
The Inspector of Police
G2 Periyamedu Police Station
Chennai.

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Respondents

Prayer: 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



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24.07.2023 in No.327/BCDFGISSSV/2023 against the petitioner' son Narendiran @ Nandhu M/A 23 years, who is confined at Central Prison, Puzhal and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

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, father of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent against his son dated 24.07.2023, 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 23.08.2023. According to the learned counsel for the petitioner, though the representation dated 23.08.2023, was received by the Government on 28.08.2023 ; and though the file has



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been dealt with by the Deputy Secretary on 30.08.2023, the Minister concerned dealt with the file only on 07.09.2023 and the Rejection Letter prepared on 07.09.2023 was sent to the detenu on 08.09.2023. 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.

(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 23.08.2023, which was received by the Government on 28.08.2023, was dealt with by the Minister concerned only on 07.09.2023 and the Rejection Letter was prepared on the next day. Thus, we find there is a considerable delay of five days [after excluding the intervening Saturday and Sunday [02.09.2023, 03.09.2023 and 06.09.2023]] in considering the representation of the petitioner. This inordinate delay in considering the



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detenu's representation remain unexplained.

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(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 30.08.2023 to 07.09.2023, 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.327/BCDFGISSSV/2023 dated 24.07.2023, 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]
14.12.2023

AP

Internet : Yes

To

- 1.The Secretary to the Government
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Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
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- 3.The Superintendent
Central Prison, Puzhal, Chennai.
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- 5.The Public Prosecutor,
High Court, Madras



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