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HCP.No.1708/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1708/2023

Mary

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Petitioner

vs.

1.State of Tamil Nadu

rep.by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department,
Fort St George, Chennai 600 009.

2.The Commissioner of Police

The Greater Chennai City
Vepery, Chennai 600 007.

3.The Superintendent of Prison

Central Prison, Puzhal, Chennai 600 066.

4.The Inspector of Police

S8 Adambakkam Police Station
Chennai.

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Respondents



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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 the detention order in Memo No.274/BCDFGISSSV/2023 dated 29.06.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Surya @ IMC Surya son of Mathiyazhagan, aged about 24 years the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.A.Vinoth Kumar

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 BCDFGISSSV No.274/2023 dated 29.06.2023, branding the detenu as a "Goonda" under the Tamil Nadu Act 14 of 1982.

(2)Heard the learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.



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(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 28.08.2023. According to the learned counsel for the petitioner, the representation dated 28.08.2023, was received by the Government on 30.08.2023 ; and though the file has been dealt with by the Deputy Secretary on the same day on 30.08.2023, the Minister concerned dealt with the file only on 07.09.2023 and the Rejection Letter prepared and 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*.

(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,



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dated 28.08.2023, which was received by the Government on 30.08.2023 ; that, which was dealt with by the Deputy Secretary on 30.08.2023, was dealt with by the Minister concerned only on 07.09.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a considerable delay of five days [after excluding the intervening holidays, namely 02.09.2023, 03.09.2023 and 06.09.2023] in considering the representation of the petitioner. This 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 of five days. 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:



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"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 of five days, 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.



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(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 BCDFGISSSV No.274/2023 dated 29.06.2023, 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.

[SSSRJ] [SMJ]
28.11.2023

AP
Internet : Yes



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To
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- 2.The Commissioner of Police
The Greater Chennai City
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- 5.The Public Prosecutor,
High Court, Madras



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

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