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H.C.P.No.1729 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1729 of 2023

Kayalvizhi

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented 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,
R-5 Virugambakkam Police Station,
Chennai.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records relating to the detention order in Memo.No.227/BCDFGISSSV/2023 dated 12.06.2023 passed by the 2nd respondent under the Tamil Nadu Act 14/1982 and set aside the same and direct the respondents to produce the petitioner's son Choattu Vicky @ Vigneshwaran, S/o.Paneerselvam, aged 22 years, 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
Additional Public Prosecutor
assisted by Aravind C.

ORDER

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

The petitioner, mother of the detenu Choattu Vicky @ Vigneshwaran, S/o.Paneerselvam, aged 22 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 12.06.2023, slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,



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Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders,
Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2.Heard the learned counsel for the petitioner and the learned
Additional Public Prosecutor appearing for the respondents.

3.Even though the learned counsel for the petitioner raised many
grounds 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 petitioner, dated 28.08.2023. According to the learned
counsel for the petitioner, though the representation is dated 28.08.2023, the
same has been received by the Government only on 30.08.2023; the file has
been dealt with by the Deputy Secretary on 01.09.2023 and the Minister
concerned dealt with the file only on 07.09.2023 and the Rejection Letter
was prepared and sent to the detenu on the same day, i.e., 07.09.2023. It is
the further submission of the learned counsel that the delay of 4 days in
considering the representation remains unexplained and the same vitiates
the detention order. In support of his contention, the learned counsel for the



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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.Heard the learned Additional Public Prosecutor appearing for the respondents.

5.As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that the representation of the petitioner is dated 28.08.2023, which was received by the Government on 30.08.2023 and further, the Minister concerned had dealt with the file of the detenu only on 07.09.2023 and the Rejection Letter was prepared on 07.09.2023. Thus, we find there is a considerable delay of 4 days in considering the representation of the petitioner. This delay of 4 days in considering the detenu's representation remains unexplained.

6.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 delay of 4 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7. 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."

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 4 days has not been



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properly explained at all.

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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 petitioner.

10.Accordingly, the Habeas Corpus Petition is allowed and the detention order in Memo.No.227/BCDFGISSSV/2023 dated 12.06.2023, passed by the 2nd respondent is quashed. The detenu Choattu Vicky @



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Vigneshwaran, S/o.Paneerselvam, aged 22 years, is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

(S.S.S.R., J.) (S.M., J.)
15.11.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
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