



HCP.No.1752/2023

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.1752/2023

Selvalagi

Versus

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Petitioner

1.The State of Tamil Nadu rep.by its
Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Avadi City.

3.The Inspector of Police
M5 Ennore Police Station
Chennai.

4.The Superintendent
Central Prison, Puzhal,
Chennai.

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Respondents



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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the entire records relating to the petitioner's sister's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 24.07.2023 on the file of the 2nd respondent herein made in proceedings No.187/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's sister's son namely Saran @ Bothal Saran, aged 23 years, son of Thangaraj, before this Court and set the petitioner's husband at liberty from detention now the petitioner's sister's son detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Mahendran
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, maternal aunt of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 24.07.2023 slapped on her sister's son, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.

(2)Heard the learned counsel for the petitioner and the learned Additional



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Public Prosecutor appearing for the respondents.

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(3) Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is a delay in considering the representation of the detenu, dated 30.08.2023. According to the learned counsel for the petitioner, the representation dated 30.08.2023, was received by the Government on 31.08.2023 ; and though the file has been dealt with by the Deputy Secretary on the same day, i.e., on 31.08.2023, the Minister concerned dealt with the file only on 07.09.2023 and the Rejection Letter prepared on the same day, was sent to the detenu on 08.09.2023. It is the further submission of the learned counsel that this four days 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, dated 28.08.2023, which was received by the Government on 31.08.2023,



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was dealt with by the Minister concerned only on 07.09.2023 and the Rejection Letter was prepared on 07.09.2023. Thus, we find there is a considerable delay of four days [after excluding the intervening Saturday and Sunday and Public Holiday [02.09.2023, 03.09.2023 and 06.09.2023] 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



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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 three 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 view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid reasons, this Court is of the view that the detention order is liable to be quashed.

(10) Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 24.07.2023 in No,187/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
14.12.2023

AP

Internet: Yes

To

1. The Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
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2. The Commissioner of Police, Avadi City.
3. The Inspector of Police
M5 Ennore Police Station , Chennai.
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5. The Public Prosecutor
High Court, Madras.

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

AP

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