



H.C.P.No.1926 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Dinesh

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 66.

4.The Inspector of Police,
C-2, Elephant Gate 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 in connection with the order of detention passed by the 2nd respondent dated 28.08.2023 in Memo.No.381/BCDFGISSSV/2023 against the petitioner's friend Ajith @ Ajithkumar, Male, aged 24 years, S/o.Chinnathambi, who is confined at Central Prison, Puzhal, Chennai, and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

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

The petitioner, who is the friend of the detenu Ajith @ Ajithkumar, aged 24 years, S/o.Chinnathambi, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 28.08.2023 slapped on his friend, branding him as "Goonda" under the



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Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, 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.Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of Detention passed by the Detaining Authority is vitiated for material irregularities, as the copy of the bail order in the similar case relied upon by the Detaining Authority, i.e., CrI.M.P.No.7525 of 2023, has not been furnished to the detenu. It is therefore stated that the detenu is deprived of his valuable right to make effective representation.

4.Though it is seen that from the Grounds of Detention that the Detaining Authority has relied upon a similar case in CrI.M.P.No.7525 of



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2023, on a perusal of the Booklet, this Court finds that the copy of the bail order in the similar case relied upon by the Detaining Authority has not been furnished to the detenu. Therefore, this Court is of the view that the non-furnishing of the copy of the vital document relied upon by the Detaining Authority to arrive at a subjective satisfaction that the detenu is likely to be released on bail, would deprive the detenu of his valuable right to make effective representation. It is in the said circumstances, this Court finds that the Detention Order passed by the Detaining Authority is vitiated.

5.In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in *Powanammal Vs. State of Tamil Nadu* reported in **(1999) 2 SCC 413**. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 {as in SCC journal} as follows:



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"9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

.....



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16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."

6. Learned counsel for the petitioner further submitted that there is an unexplained delay in considering the representation of the petitioner, dated 28.11.2023. According to the learned counsel for the petitioner, though the representation is dated 28.11.2023, the same has been received by the Government only on 30.11.2023; the file has been dealt with by the Deputy Secretary on 30.11.2023 and the Minister concerned dealt with the file only on 06.12.2023 and the Rejection Letter was prepared on 06.12.2023 and sent to the detenu on 06.12.2023. It is the further submission of the learned counsel that the delay of 3 days 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



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the Hon'ble Supreme Court in *Rajammal vs. State of Tamil Nadu*,
reported in (1999) 1 SCC 417.

7.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 28.11.2023, which was received by the Government on 30.11.2023 and further, the Minister concerned had dealt with the file of the detenu only on 06.12.2023 and the Rejection Letter was sent to the detenu on 06.12.2023. Thus, we find there is a considerable delay of 3 days in considering the representation of the petitioner. This delay of 3 days in considering the petitioner's representation remains unexplained.

8.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 3 days.



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

9. 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 3 days has not been properly explained at all.



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WEB COPY 10. 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.

11. In the light of the above discussion, we have no hesitation in quashing the order of detention on the ground of non-furnishing of copies of vital documents to the detenu as well as delay on the part of the Government in disposing of the representation of the petitioner.

12. Accordingly, the detention order passed by the 2nd respondent, dated 28.08.2023, in No.381/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Ajith @ Ajithkumar,



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aged 24 years, S/o.Chinnathambi, 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.)
22.12.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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2.The Commissioner of Police,
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5.The Public Prosecutor,
High Court, Madras.

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and
SUNDER MOHAN, J.

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