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HCP.No.656 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.656 of 2024

Musaf Hisham K

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Inspector of Police,
Anti Vice Squad – I,
Chennai.

4.The Superintendent,
Central Prison, Puzhal,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's father's detention under Tamil Nadu Act 14 of 1982 vide



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detention order dated 29.12.2023 on the file of the second respondent herein made in proceedings No.698/BCDFGISSSV/2023 and quash the same as illegal consequently direct the respondents herein to produce the petitioner's father namely Waseem Ahmed, S/o.Abdul Malik, aged about 47 years, before this Court and set him at liberty, now detained at Central Prison, Puzhal, Chennai – 600 066.

For Petitioner : Mr.C.C.Chellappan

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

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein, who is the son of the detenu namely Waseem Ahmed, aged about 47 years, S/o.Abdul Malik, has come forward with this petition challenging the detention order passed by the second respondent dated 29.12.2023 slapped on his father, branding him as "Immoral Traffic Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



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2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner focused mainly on the ground that there is an unexplained delay in considering the representation of the petitioner, dated 16.03.2024. According to the learned counsel for the petitioner, though the representation is dated 16.03.2024, the same has been received by the Government only on 20.03.2024; the file has been dealt with by the Deputy Secretary on 22.03.2024 and the Minister concerned dealt with the file on 30.03.2024 and the Rejection Letter was prepared on 01.04.2024 and was sent to the detenu only on 03.04.2024. 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 petitioner relied on the judgment of the Hon'ble Supreme Court in ***Rajammal Vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***



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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 petitioner is dated 16.03.2024, which was received by the Government on 20.03.2024 and further, the Minister concerned had dealt with the file of the detenu only on 30.03.2024 and the Rejection Letter was sent to the detenu on 03.04.2024. Thus, we find there is a delay of 4 days in considering the representation of the petitioner. This delay of 4 days in considering the petitioner's representation remains 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 delay of 4 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.



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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."

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 properly explained at all.

7. 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',



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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.

8. In the light of the above discussion, 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.

9. Accordingly, the detention order passed by the second respondent on 29.12.2023 in No.698/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu namely Waseem Ahmed, aged about 47 years, S/o.Abdul Malik, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]
30.04.2024

Index: Yes/No
Neutral Citation: Yes/No

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To

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Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Inspector of Police,
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Central Prison, Puzhal,
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High Court, Madras.



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M.S.RAMESH, J.
and
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