WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM :

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

H.C.P.No.949 of 2024

Sandhiya ... Petitioner

Vs.

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

2.The Commissioner of Police,
Avadi City,
Avadi.

3.The Superintendent of Prisons,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
M-5, Ennore Police Station,
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 from the 2nd respondent in connection with order No.25/BCDFGISSSV/2024 dated

https://www.mhc.tn.gov.in/judis

WEB COPY

24.03.2024 and quash the same and produce the petitioner's husband namely, Gopala Krishnan, S/o.Selvaraj aged 48 years, now confined in Central Prison, Puzhal, Chennai under the Tamil Nadu Act 14 of 1982 before this Hon'ble Court and set him at liberty.

For Petitioner : M/s.S.Nadhiya
For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

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

The petitioner herein, who is wife of the detenu namely Gopalakrishnan, aged about 48 years, S/o.Selvaraj, has come forward with this petition challenging the detention order passed by the second respondent dated 24.03.2024 slapped on her husband, branding him as "GOONDA" 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].

https://www.mhc.tn.gov.in/judis

WEB COPY

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 22.04.2024. According to the learned counsel for the petitioner, though the representation is dated 22.04.2024, the same has been received by the Government only on 26.04.2024; the file has been dealt with by the Deputy Secretary on 02.05.2024 and the Minister concerned dealt with the file on 07.05.2024 and the Rejection Letter was prepared on 08.05.2024 and was sent to the detenue only on 09.05.2024. 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 the Hon'ble Supreme Court in ***Rajammal Vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***

https://www.mhc.tn.gov.in/judis

WEB COPY

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 22.04.2024, which was received by the Government on 26.04.2024 and further, the Minister concerned had dealt with the file of the detenue only on 07.05.2024 and the Rejection Letter was sent to the detenue on 09.05.2024. Thus, we find there is a delay of 3 days in considering the representation of the petitioner. This delay of 3 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 3 days. Therefore, we have to hold that the delay has vitiated further detention of the detenue.

https://www.mhc.tn.gov.in/judis

WEB COPY

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 3 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

https://www.mhc.tn.gov.in/judis

WEB COPY

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 detenue, 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 24.03.2024 in No.25/BCDFGISSSV/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu namely Gopalakrishnan, aged about 48 years, S/o.Selvaraj, 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]
15.07.2024

Index: Yes/No
Neutral Citation: Yes/No
Tsg

https://www.mhc.tn.gov.in/judis

WEB COPY

To

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

2.The Commissioner of Police,
Avadi City,
Avadi.

3.The Superintendent of Prisons,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
M-5, Ennore Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

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

Tsg

H.C.P.No.949 of 2024

15.07.2024

https://www.mhc.tn.gov.in/judis