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H.C.P.No.1195 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS.JUSTICE N.MALA

H.C.P.No.1195 of 2024

R.Devi Tamilarasi

... Petitioner

Vs.

1.State Represented by its
Home Secretary to the Government of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai – 600 003.

3.The Inspector of Police,
V-6, Kolathur Police Station,
Kolathur,
Chennai – 600 099.

4.The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai – 600 006.

... Respondents



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Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, to call for the records in relating to the order of Detention passed by the 2nd respondent dated 28.04.2024 in No.422/BCDFGISSSV/2024 against the Petitioner's Husband, the Detenue, Rathinaraj, Male, aged about 48 years, son of Vaithiyalingam, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner : Mr.A.R.Ram

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The order of detention passed by the 2nd respondent in his office No.422/BCDFGISSSV/2024 dated 28.04.2024, is sought to be quashed in the present Habeas Corpus Petition.

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



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3. The order of detention sought to be assailed and the fact as narrated would reveal that, there is a delay of 5 days in considering the representation. The delay in considering the representation and the period during which the detenu was under detention would be construed as violation of the Constitutional mandatory under Article 22 of Constitution of India and thus, the ground of delay in considering the representation became fatal in the case of preventive detention.

4. 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.



5. The Hon'ble Supreme Court of India in the case of ***Rajammal vs.***

State of Tamil Nadu and Another¹, it has been held as follows:

“7. 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. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi v. Union of India [(1991) 1 SCC 476 : 1991 SCC (Cri) 613] . The following observations of the Bench can profitably be extracted here: (SCC p. 484, para 12)

“It is a constitutional mandate commanding the authority concerned to

1. (1999) 1 SCC 417



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whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words ‘as soon as may be’ occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the detention law concerned, within which the representation should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.”



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6. As per the dictum laid down by the Supreme Court in above cited *Rajammal's* case cited *supra*, 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 has not been properly explained at all.

7. Further, in a recent decision in *Ummu Sabeena vs. State of Kerala*², 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.

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.

2. 2011 STPL (Web) 999 SC



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9. Accordingly, the detention order passed by the 2nd respondent, in No.422/BCDFGISSSV/2024 dated 28.04.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Rathinaraj, S/o.Vaithiyalingam Nadar, aged about 48 years, now confined at Central Prison, Puzhal, Chennai, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.M.S., J.] [N.M., J.]
19.09.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Home Secretary to the Government of Tamil Nadu,
State
Home Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai – 600 003.

3.The Inspector of Police,
V-6, Kolathur Police Station,
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4.The Superintendent of Prison,
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5.The Public Prosecutor,
Madras High Court.



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