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HCP.No.1318 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.1318 of 2024

K.Nirmala

... Petitioner

Vs.

1.The Principal Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

2.The Commissioner of Police,
Coimbatore City.

3.The Superintendent of Prison,
Central Prison,
Coimbatore.

4.The Inspector of Police,
E-2, Peelamedu Police Station,
Coimbatore City.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records on C.NO. 44/G/IS/2024 on the file of the second respondent, set aside the detention order dated 11.05.2024 and direct the second respondent to produce the K.Parthipan son of Karunanthi aged about



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33 years, presently detained at the Central prison, Coimbatore under the Tamil Nadu act 14 of 1982 as a Goonda before this court and set him at liberty.

For Petitioner : Mr.K.Balasubramaniam

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 proceedings Memo C.NO.44/G/IS/2024 dated 11.05.2024, 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.

3. The order of detention sought to be assailed and the fact as narrated would reveal that, there is a delay of three days in considering the representation. The delay in considering the representation and the period during which the detainee 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



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in considering the representation became fatal in the case of preventive detention.

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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. 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."



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6.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 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', 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.



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9. Accordingly, the detention order passed by the second respondent, in Memo C.NO. 44/G/IS/2024, dated 11.05.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., K.Parthipan son of Karunanathi aged about 33 years, presently detained at the Central prison, Coimbatore, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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To

- 1.The Principal Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Coimbatore City.
- 3.The Superintendent of Prison,
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Coimbatore.
- 4.The Inspector of Police,
E-2, Peelamedu Police Station,
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- 5.The Public Prosecutor,
Madras High Court

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