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HCP.No.1294 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2024

CORAM :

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

H.C.P.No.1294 of 2024

Mohamada Bee

... Petitioner

Vs.

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

2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai – 600 007.

3.The Inspector of Police,
D3 IceHouse Police Station,
Chennai.

4.The Superintendent of Prison,
Special Central Prison for Women,
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 records relating to the detention order dated



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21.05.2024 passed by the second respondent in BCDFGISSSV NO. 551/2024 and direct the respondents herein to produce the body of the petitioner's daughter namely Rahamath Nisha wife of Kamal Basha, aged 36 years, who is presently undergoing detention in the Special Prison for Women, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.M.Hussainbasha

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 BCDFGISSSV NO. 551/2024, dated 21.05.2024, 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 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. 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



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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 Proceedings BCDFGISSSV NO. 551/2024, dated 21.05.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Rahamath Nisha wife of Kamal Basha, aged 36 years, who is presently undergoing detention in the Special Prison for Women, Puzhal, Chennai, is directed to be set at liberty forthwith unless she 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.

gd

To

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

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Vepery, Chennai – 600 007.

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5.The Public Prosecutor,
Madras High Court

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