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H.C.P.No.1797 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1797 of 2024

Tmt.Govindammal

... Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Tirupathur District, Tirupathur.

3.The Superintendent of Police,
Tirupathur District,
Tirupathur.

4.The Superintendent of Prison,
Central Prison, Vellore,
Vellore District.

5.The Inspector of Police,
Kurisilapet Police Station,
Tirupathur District.

... Respondents



H.C.P.No.1797 of 2024

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent dated 04.07.2024 in his office Ref.C3.D.O.No.33/2024 against the petitioner's son by name Thiru.Venkatesan, S/o.Nadarajan, aged about 32 years, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenue before this Court and set him at liberty.

For Petitioner : Mr.R.Kannadasan

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 Ref.C3.D.O.No.33/2024 dated 04.07.2024, 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.



H.C.P.No.1797 of 2024

WEB COPY

3. The order of detention sought to be assailed and the fact as narrated would reveal that, there is a delay of seven 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:

WEB COPY

“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 whom the detenu submits his representation to consider the

1 [(1999) 1 SCC 417]



WEB COPY



H.C.P.No.1797 of 2024

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.”

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.



H.C.P.No.1797 of 2024

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.

9. Accordingly, the detention order passed by the 2nd respondent, in his office Ref.C3.D.O.No.33/2024 dated 04.07.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru.Venkatesan, S/o.Nadarajan, aged about 32 years, now confined at Central Prison, Vellore, Vellore District, 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.]

2 [2011 STPL (Web) 999 SC]



H.C.P.No.1797 of 2024

22.08.2024

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

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- 6.The Public Prosecutor,
Madras High Court.



WEB COPY



H.C.P.No.1797 of 2024

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Jeni

H.C.P.No.1797 of 2024

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