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HCP.No.2121 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM :

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

H.C.P.No.2121 of 2024

Rishi @ Rathushan

... Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Chennai – 600 009.

2.District Collector and District Magistrate
of Cuddalore District.
Cuddalore.

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

4.The Superintendent of Prison,
Central Prison – II,
Puzhal, Chennai – 600 066.

5.The Inspector of Police,
Neyveli Township Police Station,
Neyveli, Cuddalore District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, or any other appropriate writ, order or direction, directing the respondent produce the body of the detenu Mr.Rishi @ Rathushan, S/o.Gunarathinam, aged about 24 years,, who is now confined in Central Prison -11 Puzhal, Chennai, before this Hon'ble court and pass an order to call for the records of detention order passed by the second respondent in No.C3/D/O.50/2024 dated 30.05.2024 against Mr.Rishi @ Rathushan and set aside the same and set the detenu at liberty.

For Petitioner : M/s.R.Rafi Babu

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 No.C3/D/O.50/2024 dated 30.05.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The impugned detention order has been passed on six adverse cases. The learned Additional Public Prosecutor would submit that other criminal cases are also pending against the detenu. However, we found



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that all those cases registered under the Indian Penal Code can be dealt with under the law of land. More so, the detinue is already under Preventive Detention for more than six months. That apart, there is a delay of five days in considering the representation submitted by the detinue which is a ground for assailing the order impugned.

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



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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."

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.



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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.

9. Accordingly, the detention order passed by the second respondent in No.C3/D/O.50/2024 dated 30.05.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mr.Rishi @ Rathushan, S/o.Gunarathinam, aged about 24 years, who is now confined in Central Prison -11 Puzhal, Chennai, is directed to be set at liberty



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forthwith, unless his confinement is required in connection with any other case.

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[S.M.S., J.]

[V.S.G., J.]

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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To

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- 3.The Superintendent of Police,
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- 6.The Public Prosecutor,
Madras High Court.

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