



H.C.P.No.2267 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.SIVAGNANAM

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Siva Sathya
W/o Gopal

.. Petitioner

v.

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

2. The Commissioner of Police
Avadi City

3. The Superintendent
Central Prison, Puzhal
Chennai-66

4. The Inspector of Police
T-14, Mangadu Police Station
Avadi City

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent pertaining to the order



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made in BCDFGISSSV No.124/2024 dated 12.08.2024 in detaining the detenu under 2(f) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu Gopal, Son of Chinnadurai, aged about 33 years, who is detained at Central Prison, Puzhal at Chennai before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.G.Nirmal Krishnan

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.124/BCDFGISSSV/2024 dated 12.08.2024 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 facts as narrated would reveal that there is a delay of eight days in considering the representation. The delay in considering the representation and the period



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during which the detenu was under detention would be construed as violation of the Constitutional mandate 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. Moreover, the special report filed by the sponsoring authority is not dated.

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 v. State of Tamil Nadu and another, (1999) 1 SCC 417***, it has been held as follows:



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"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.

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)



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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 sole 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.124/BCDFGISSSV/2024 dated 12.08.2024, is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Thiru.Gopal S/o Chinnadurai, aged 33 years who is presently under going detention in the Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless he is required in connection with any other case.

Index : yes
Neutral citation : yes/no
SS

(S.M.S.,J.) (V.S.G.,J.)
25.10.2024



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WEB COPY To

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S.M.SUBRAMANIAM,J.

AND

V.SIVAGNANAM,J.

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