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H.C.P.No.1906 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1906 of 2023

R. Bhaskaran

... Petitioner

Vs.

1. The State of Tamil Nadu

Rep. by the Secretary to the Government,
Public (Law and Order)Department,
Secretariat, Chennai 600 009.

2. The Union of India

Represented by the Secretary to the Government,
Ministry of Finance,
Department of Revenue (COFEPOSA UNIT),
Central Economic Intelligence Bureau,
Janpath Bhavan, VI Floor, 'B' Wing,
Janpath, New Delhi 110 001.

3. The Superintendent of Central Prison,
Central Prison, Puzhal, Chennai.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the



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records relating to the detention order in G.O.SR.I/56-9/2023, Public (SC) department, dated 31.08.2023 passed by the first respondent, quash the same and direct the respondents to produce the body of the person of the detenu, R. Bhaskaran, Son of Rangaswamy now detained in the Central Prison II, Puzhal, Chennai as COFEPOSA, detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.B. Sathish Sundar

For R1 & R3 : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

For R2 : Mr. N. Ramesh
Senior Panel Counsel, Govt. of India

ORDER

(Order of the Court was made by **M.S.RAMESH, J.**)

The detenu, R. Bhaskaran, aged about 56 years, is the petitioner herein. He has come forward with this petition challenging the detention order passed by the 1st respondent dated 31.08.2023, branding him as "COFEPOSA offender", under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).



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2. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor appearing for the respondents 1 and 3 and the learned Senior Panel Counsel, Govt. of India, appearing the 2nd respondent.

3. Learned counsel for the petitioner advanced his arguments on the grounds of

- i. delay in passing the order of detention;
- ii. delay in considering the representation of the detenu, dated 14.09.2023; and
- iii. non placement of show cause notice issued to the detenu on 02.08.2023 before the Detaining Authority.

4. In the instant case, admittedly, the detenu was arrested on 07.01.2023 and the detention order came to be passed by the 1st respondent herein only on 31.08.2023, in between which there is a delay of almost eight months. The 1st respondent in his counter affidavit has attempted to explain this delay in the following manner:



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"(viii) It is also humbly submitted that the proposal for detention of Thiru R. Bhaskaran was received from the Sponsoring Authority on 01.06.2023. It was meticulously examined by the Detaining Authority. During such examination of the matter, the Detaining Authority called for further information / evidence / development of the case and documents from the Sponsoring Authority in six instances on 10.06.2023, 19.06.2023, 27.06.2023, 11.07.2023, 18.07.2023 and 07.08.2023 and scrutinized all the documents with due care. After satisfying that there are valid grounds for detention of the detenu, the detention order was passed against him on 31.08.2023. Hence, the allegation made in paragraph 5(i) of the Affidavit that there was an inordinate and unreasonable delay of nearly 8 months in passing the detaining order, is devoid of merit.

The aforesaid extract is self explanatory. We are not satisfied with the aforesaid explanation attempted to be given for this inordinate delay of almost eight months, more particularly, when it is stated that the documents



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from the Sponsoring Authority was scrutinized on six occasions between 10.06.2023 and 07.08.2023, without explaining as to why it took almost two months for such scrutiny. This apart, between 07.08.2023 and 31.08.2023, there is absolutely no explanation for the delay in passing the detention order.

4.1. In a similar case, where there was a delay in passing the detention order on 18.06.2022 after the arrest of the detenu on 08.04.2022, this Court in HCP No.1388 of 2022 [*Gomathi Vs. Principal Secretary to Government and Others, reported in 2023 SCC OnLine Mad 6332*], held as follows:

“6.... As between 08.04.2022 and 18.06.2022, it is well over two months and given the facts and circumstances of the instant case, particularly ground and the adverse cases, we find that this live and proximate link between grounds and purpose of detention had in fact snapped.”

This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in *Sushanta Kumar Banik v. State of Tripura*, reported in *2022 LiveLaw (SC) 813*, though in that case, the Hon'ble Supreme Court did not directly deal with the issue of delay in passing the detention order after the arrest of the detenu. The relevant observations of



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the Hon'ble Supreme Court are extracted hereunder:-

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“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

4.2. In yet another case i.e., in *Nagaraj v. State of Tamil Nadu*, reported in **(2018) 3 MWN (Cri) 428**, this Court held that the delay of 36 days in passing the detention order after the arrest of the detenu would snap the live and proximate link between the grounds and purpose of detention. Therefore, we are of the view that in view of the unexplained delay in passing the order of detention after the arrest of the detenu, the detention order is liable to be quashed.



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5. As regards the delay in considering the representation of the detenu, in the instant case, the detenu had given a representation on 14.09.2023 to the Public Department of Government of Tamil Nadu and the said representation came to be rejected on 12.10.2023. In between the period of representation and rejection, there is an unexplained delay of 5 days between 18.09.2023 to 22.09.2023, which is ratified in paragraph 14 of the counter affidavit filed by the State Government.

5.1. 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.



5.2. In the judgment of the Hon'ble Supreme Court in ***Rajammal vs.***

State of Tamil Nadu, reported in (1999) 1 SCC 417, 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."

5.3. 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, in the instant case, there is an unexplained delay of 5 days between 18.09.2023 and 22.09.2023. 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



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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. In the light of the above fact and law, we are of the view that the detention order is liable to be quashed, also on the ground of delay on the part of the Government in disposing of the representation of the detenu.

6. The learned counsel for the petitioner also raised a ground that the show cause notice under Section 124 of the Customs Act calling for penalizing the detenu was issued on 02.08.2023, which is much before the passing of the detention order dated 31.08.2023. This apart, he would also submit that this show cause notice does not form part of the booklet accompanied the detention order. In paragraph No.7 of the counter affidavit filed by the State Government, it is stated that the show cause notice served on the petitioner was placed before the Detaining Authority on 02.08.2023 and the Detaining Authority had also examined it carefully. However, the fact remains that neither there is a reference about the show cause notice in the detention order, nor the show cause notice was furnished to the detenu



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along with the detention order. Therefore, the subjective satisfaction arrived at by the Detaining Authority is one of non application of mind, and hence the Detention order stands vitiated.

7. Thus, for the aforesaid reasons, the detention order passed by the 1st respondent dated 31.08.2023 in G.O.SR.I/56-9/2023, Public (SC) department, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu R. Bhaskaran, Son of Rangaswamy, aged about 56 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
10.01.2024

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Index : Yes / No

Neutral Citation : Yes / No



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