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H.C.P.No.2071 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2071 of 2023

Latha

... Petitioner/Wife of Detenu

Vs.

1. The Principal Secretary to Government,
Home, Prohibition @ Excise Department,
Secretariat, Chennai – 600 009.

2. The Commissioner of Police,
Avadi City.

3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.

4. The Assistant Commissioner of Police,
Prohibition Enforcement Wing,
Ambattur, Avadi City. ... 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 records in Connection with the order of Detention passed by the second



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respondent dated 16.09.2023 in Memo No.204/BCDFGISSSV/2023 against the petitioner's husband Balachandran Male, aged 40 years, S/o.Thangavel who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondent to produce the detenu before this Court and set him at Liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

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

The petitioner, wife of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 16.09.2023 slapped on her husband, branding him as "Drug Offender" under the Tamil Nadu Act 14 of 1982.

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the



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representation of the detenu, dated 16.10.2023. According to the learned counsel for the petitioner, though the representation dated 16.10.2023, was received by the Government on 19.10.2023 ; and though the file has been dealt with by the Deputy Secretary on 25.10.2023, the Minister concerned dealt with the file only on 30.10.2023 and the Rejection Letter prepared on the same day was sent to the detenu on 30.10.2023. It is the further submission of the learned counsel that this inordinate delay in considering the representation remains unexplained and the same vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***

3. Heard the learned Additional Public Prosecutor appearing for the respondents.

4. As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that, the representation of the detenu, dated 16.10.2023, which was received by the Government on 25.10.2023,



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was dealt with by the Minister concerned only on 30.10.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a considerable delay of three days [after excluding Government Holidays [on 28th and 29th of October 2023] in considering the representation of the petitioner. This inordinate delay in considering the detenu's representation remain unexplained.

5. 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.

6. In the judgment of the Hon'ble Supreme Court in ***Rajammal's case***



(*cited supra*), 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."

7. 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, the inordinate delay of three days, has not been properly explained.

8. 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



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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.



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9. In the light of the above fact and law, 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 detenu.

10. Accordingly, the Habeas Corpus Petition is allowed and the detention order dated 16.09.2023 in Memo No.204/BCDFGISSSV/2023, passed by the 2nd respondent is quashed. The detenu viz., Balachandran, S/o.Thangavel, aged about 40 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]
22.01.2024

ars

Index : Yes / No

Neutral Citation : Yes / No



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