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H.C.P.No.2137 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2137 of 2023

Mrs.Mayavathy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector & District Magistrate,
Cuddalore District,
Cuddalore.

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

4.The Superintendent,
Special Prison for Women,
Vellore.

5.The Inspector of Police,
Prohibition Enforcement Wing,
Panruti.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner's sister who is detained as Bootlegger at 4th respondent/Special Prison for Women, Vellore by the 2nd respondent vide his order C3/D.O./54/2023, dated 25.09.2023 and quash the same as illegal and consequently direct the 5th respondent to produce the body of the detenu Manikkavalli W/o.Chandirasekar, aged about 55 years from the 4th respondent before this Court and set her at liberty.

For Petitioner : Mr.Om Sai Ram

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, who is the sister of the detenu Manikkavalli, W/o.Chandirasekar, aged 55 years, has come forward with this petition challenging the detention order passed by the second respondent dated 25.09.2023 slapped on her sister, branding her as "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand



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Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act
14 of 1982].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner focussed mainly on the ground that there is an unexplained delay in considering the representation of the petitioner dated 17.10.2023. According to the learned counsel for the petitioner, though the representation is dated 17.10.2023, the same has been received by the Government only on 19.10.2023; the file has been dealt with by the Deputy Secretary on 20.10.2023 and the Minister concerned dealt with the file only on 01.11.2023 and the Rejection Letter was prepared on 01.11.2023 and sent to the detenu on 02.11.2023. It is the further submission of the learned counsel that the delay of 5 days 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**'.



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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 petitioner is dated 17.10.2023, which was received by the Government on 19.10.2023 and further, the Minister concerned had dealt with the file of the detenu only on 01.11.2023 and the Rejection Letter was sent to the detenu on 02.11.2023. Thus, we find there is a considerable delay of 5 days in considering the representation of the petitioner. This delay of 5 days in considering the petitioner's representation remains 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 delay of 5 days. 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."

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 of 5 days has not been properly explained at all.

7. Further, in a recent decision in ***'Ummu Sabeena Vs. State of Kerala'*** reported in ***'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



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of urgency and without any avoidable delay.

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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 C3/D.O./54/2023, dated 25.09.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Manikkavalli, W/o.Chandirasekar, aged 55 years, is directed to be set at liberty forthwith unless she is required in connection with any other case.

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

01.02.2024

Index: Yes / No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes / No

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and
SUNDER MOHAN, J.

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