



H.C.P.No.2103 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2103 of 2023

Monisha
W/o.Abhisek

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai-600 066.

4.The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai.

... Respondents



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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 relating to the detention order in Memo No.390/BCDFGISSSV/2023, dated 08.09.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband ABHISEK S/o.CHARLES aged about 23 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner	:	Mr.S.Amarnath
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, Abhisek, aged 23 years S/o.Charles, has filed this Petition challenging the order of detention passed by the 2nd respondent against her husband, in BCDFGISSSV No.390/2023, dated 08.09.2023, branding the detenu as a "Goonda" under the Tamil Nadu Act 14 of 1982.



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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 representation of the detenu, dated 19.10.2023. According to the learned counsel for the petitioner, though the representation dated 19.10.2023, was received by the Government on 20.10.2023; and though the file has been dealt with by the Deputy Secretary on 20.10.2023, the Minister concerned dealt with the file only on 30.10.2023 and the Rejection Letter prepared on 30.10.2023 was sent to the detenu on the next day i.e.31.10.2023. 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 19.10.2023, which was received by the Government on 20.10.2023, was dealt with by the Minister concerned only on 30.10.2023 and the Rejection Letter was prepared on 31.10.2023. Thus, we find there is a considerable delay of three days [after excluding the intervening Saturday and Sunday and Public Holiday [21.10.2023, 22.10.2023, 23.10.2023, 24.10.2023, 28.10.2023 and 29.10.2023] 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:

"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, here the inordinate delay from 20.10.2023 to 30.10.2023, has not been properly explained at all.

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



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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.

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 in BCDFGISSSV No.390/2023, dated 08.09.2023, passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

[M.S.R., J] [S.M., J]
09.01.2024

pvs

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

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To
WEB COPY

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- 5.The Public Prosecutor,
High Court, Madras.



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