



H.C.P.No.2379 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2379 of 2023

Shanthi

... Petitioner / Mother of the detenu

Vs.

1. The State of Tamil Nadu

Represented by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9

2. The District Magistrate and District Collector,

Office of the District Collector,
Erode.

3. The Superintendent of Police,

Central Prison, Coimbatore.

4. The Superintendent of Police,

Superintendent of Police Office,
Erode.

5. The Inspector of Police,

Erode Town Police Station,
Enforcement Wing, Erode.

... Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 28.09.2023 on the file of the second respondent herein made in proceedings Memo Cr.M.P. No.23/Drug Offence/2023/C1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Anandhkumar alias Anand, S/o.Late Dhanushkodi, aged 38 years, before this Hon'ble Court and set him at liberty, now the petitioner's son detained at Central Prison, Coimbatore.

For petitioner : Mr.Deepan Uday

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

ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

The Petitioner, mother of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent against her son, in Cr.M.P. No.23/Drug Offender/2023 C1/2023 dated 28.09.2023, branding the detenu as a "Drug Offender" as contemplated under Section 2(e) of 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 25.09.2023. According to the learned counsel for the petitioner, the representation dated 25.09.2023 was received by the Government belatedly on 30.11.2023 i.e., nearly after 35 days of its submission and the file has been dealt with by the Deputy Secretary only on 06.12.2023 and the Minister concerned dealt with the same on 07.12.2023. Thereafter, the Rejection Letter prepared on 08.12.2023 was sent to the detenu on 11.12.2023. 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 counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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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 detenu, dated 25.09.2023, was received by the Government belatedly on 30.11.2023 and the same was dealt with by the Minister concerned only on 07.12.2023 and the Rejection Letter was prepared on 08.12.2023. Thus, we find there is a delay of three days [after excluding the intervening Saturday and Sunday and Public Holidays [02.12.2023, 03.12.2023 & 4.12.2023]] in considering the representation of the petitioner. This 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 delay. Therefore, we have to hold that the delay has vitiated further detention of the detenu.



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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."

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 delay from 01.12.2023 to 07.12.2023, 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) of the Constitution of India clearly shows the concern of the makers of



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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 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.

9. Accordingly, the habeas corpus petition is allowed and the detention order in Cr.M.P. No.23/Drug Offender/2023 C1 dated 28.09.2023, passed by the 2nd respondent is quashed. The detenu, Anandhakumar alias Anand, aged about 38 years, S/o. (Late) Dhanushkodi, 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]
05.02.2024**

bga

Index : Yes / No

Neutral Citation : Yes / No

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To
WEB COPY

1. The State of Tamil Nadu
Represented by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9
2. The District Magistrate and District Collector,
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3. The Superintendent of Police,
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Erode.
5. The Inspector of Police,
Erode Town Police Station,
Enforcement Wing, Erode.
6. The Public Prosecutor
High Court, Madras.
7. The Joint Secretary,
Law and Order Department, Secretariat, Chennai.



WEB COPY



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