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H.C.P.(MD) No.264 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

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Abdullahsha

... Petitioner

-VS-

1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009

2.The Commissioner of Police
Office of Commissioner of Police
Pudukottai Main Road
Tiruchirappalli City-620 020

3.The Inspector of Police
Fort All Women Police Station
Town Hall
Tiruchirappalli-620 008

4.The Superintendent of Prisons
Special Prison for Women
Gandhi Market
Tiruchirappalli-620 008

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order in C.No. 109/Detention/C.P.O/TC/2023, dated 08.12.2023, on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's wife, namely, Parakath Nisha, wife of Abdullasha, aged about 38 years, now confined in Special Prison for Women, Tiruchirappalli, before this Court and set her at liberty forthwith.

For Petitioner : Mr.C.Karthikeyan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the husband of the detainee viz., Parakath Nisha, aged about 38 years. The detainee has been detained by the second respondent by his order in C.No.109/Detention/C.P.O/TC/2023, dated 08.12.2023, holding her to be an "Immoral Traffic Offender", as contemplated under Section 2(g) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.



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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the habeas corpus petition, learned counsel for the petitioner focused mainly on the grounds that there is an unexplained delay in considering the representation of the petitioner, dated 08.02.2024 and non-furnishing of translated copy of the documents relied on by the Detaining Authority, in vernacular language. According to the learned counsel for the petitioner, though the representation is dated 08.02.2024, the same was received by the Government on 12.02.2024 and the rejection letter was sent to the detainee on 22.02.2024. There is a delay of four days in considering the petitioner's representation. The said delay of four days in considering the representation remains unexplained and the same vitiates the impugned detention order. In support of his contention, learned counsel for the petitioner relied on the Judgment of the Honourable Supreme Court in ***Rajammal vs. State of Tamil Nadu***, reported in **(1999) 1 SCC 417**. Further, the translated copy of the Accident Registers relied on by the Detaining Authority at Page Nos.20 to 23 of the Booklet, in vernacular language, have not been furnished to the detainee. It is, therefore, stated that



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the detainee is deprived of her valuable rights to make an effective representation.

4. Learned Additional Public Prosecutor, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the impugned detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detainee and hence, prayed for dismissal of the habeas corpus petition

5. 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 08.02.2024, which was received by the Government on 12.02.2024 and the rejection letter was sent to the detainee on 22.02.2024. As per the proforma submitted the by the learned Additional Public Prosecutor, there is a delay of four days in considering the representation of the petitioner and we find that the said delay remains unexplained.



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6. 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 four days. Therefore, we have to hold that the delay has vitiated further detention of the detainee.

7. In the above cited decision of the Honourable Supreme Court in **Rajammal's** case, it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detainee 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."

8. 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



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authorities concerned. But, in the instant case, the inordinate delay of four days has not been properly explained.

9. Further, in a recent decision in ***Ummu Sabeena vs. State of Kerala-2011 STPL (Web) 999 SC***, the Honourable 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 detainee, should be considered and disposed of with a sense of urgency and without any avoidable delay.

10. Further, on a perusal of the Booklet, this Court finds that the translated copy of the Accident Registers relied on by the Detaining Authority at Page Nos.20 to 23 of the Booklet, in vernacular language, have not been furnished to the detainee. Therefore, we are of the view that the non-furnishing of the said documents would deprive the detainee of her valuable right to make an effective representation.



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11. In this context, it is useful to refer to the Judgment of the Honourable Supreme Court in the case of ***Powanammal vs. State of Tamil Nadu***, reported in **(1999) 2 SCC 413**, wherein the Apex Court, after discussing the safeguards embodied in Article 22(5) of the Constitution of India, observed that the detenu should be afforded an opportunity of making a representation effectively against the detention order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. The relevant portion of the said decision is extracted hereunder:

"6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

...

...

9. However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial



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of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

...

...

16. For the above reasons, in our view, the nonsupply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."

12. We find that the above cited **Powanammal**'s case applies in all force to the case on hand as we find that non-furnishing of translated copy of the Accident Registers relied on by the Detaining Authority at Page Nos.20 to 23 of the Booklet, in vernacular language, to the detenue, has impaired her constitutional right to make an effective representation against the impugned



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preventive detention order. To be noted, this constitutional right is ingrained in the form of a safeguard in Clause (5) of Article 22 of the Constitution of India.

13. In the light of the above discussion, we have no hesitation in quashing the order of detention on the grounds of delay on the part of the Government in disposing of the representation of the petitioner and non-furnishing of documents relied on by the Detaining Authority in vernacular language to the detainee.

14. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.109/Detention/C.P.O/TC/2023, dated 08.12.2023, passed by the second respondent is set aside. The detainee, viz., Parakath Nisha, wife of Abdullasha, aged about 38 years, is directed to be released forthwith unless her detention is required in connection with any other case.

[A.D.J.C., J.] [K.R.S., J.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Office of Commissioner of Police,
Pudukottai Main Road,
Tiruchirappalli City-620 020.
- 3.The Inspector of Police,
Fort All Women Police Station,
Town Hall,
Tiruchirappalli-620 008.
- 4.The Superintendent of Prisons,
Special Prison for Women,
Gandhi Market,
Tiruchirappalli-620 008.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.
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