



H.C.P.(MD) No.419 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

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Chandrakumar

... Petitioner

Vs

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (xiv) Department,
Fort St. George, Chennai-600 009.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents



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WEB CONTENT

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records call for the entire records connected with the detention order of the respondent no.2 in M.H.S Confdl No. 39/2024, dated 28.02.2024 and quash the same and direct the respondents to produce the body or person of the detenu by name Chandrakumar, Son of Natarajan, aged about 33 years, detained as “Goonda” at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

ORDER

The petitioner is the detenu viz., Chandrakumar, aged about 33 years, Son of Natarajan. The detenu has been detained by the second respondent by his order in Detention Order No.M.H.S Confdl No. 39/2024, dated 28.02.2024 holding him to be a "Goonda", as contemplated under Section 2(f) 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 ground that there is an unexplained delay in considering the representation of the petitioner, dated 26.03.2024. According to the learned counsel for the petitioner, though the representation is dated 26.03.2024, the same was received by the Government on 02.04.2024 and the rejection letter was sent to the detenu on 22.04.2024. There is a delay of 7 days in Column Nos.6 to 9A and 10 to 12 of the Proforma dated 14.08.2024 in considering the petitioner's representation. The said delay of 7 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***.



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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 detenu 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 26.03.2024, which was received by the Government on 02.04.2024 and the rejection letter was sent to the detenu on 22.04.2024. As per the proforma submitted by the learned Additional Public Prosecutor, there is a delay of 7 days in Column Nos.6 to 9A and 10 to 12 in considering the representation of the petitioner and we find that the said delay remains unexplained.

6. It is trite law that the representation should be very expeditiously



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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 7 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

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 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."

8. As per the dictum laid down by the Supreme Court in above cited



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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 5 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 detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

10. 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.



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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.M.H.S Confdl No. 39/2024, dated 28.02.2024, passed by the second respondent is set aside. The detenu, viz., Chandrakumar, aged about 33 years, Son of Natarajan, is directed to be released forthwith unless his detention is required in connection with any other case.

12. Before parting with the case, on perusal of the details given with respect to examining the representation of the detenu and the delay of 7 days, we find that Minister dealt with the file on 12.04.2024 and rejection letter had been prepared on 15.04.2024 and the said rejection letter had been served on the detenu by the prison authorities only on 22.04.2024. We would like to address this delay between the date of preparation of the rejection letter and the date of service of the same on the detenu. Practically in most of the cases, which we have dealt, there is an unexplained delay in such service which is not explained and cannot and should not be condoned.

13. The learned Additional Public Prosecutor, on getting instructions



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from Mr.K.Senthil Kumar, Liasoning Officer of Prison Department, stated that the rejection letter is only sent by registered post from the Secretariat at Chennai and thereafter, served on the detenu, and this causes the delay.

14.We would therefore direct the following procedure should be followed henceforth, particularly after the rejection letter is prepared:

- 1. Scanned copy of rejection letter should be sent on the same day by electronic mail to the concerned prison and the Superintendent of Prisons must be informed by phone about the sending of rejection letter through electronic mail.*
- 2. On receipt of the scanned copy of rejection letter through electronic mail, on the very same day, the Superintendent of Prisons shall, attesting the same as true copy, serve the scanned copy on the detenu on the same day and get an acknowledgement on the very same day.*
- 3. The original copy of the rejection letter may thereafter, be sent by registered post.*



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15.We make it clear that the service of scanned copy received by electronic mail by the Superintendent of Prison and attested as true copy would be an effective service of the rejection letter on the detenu and the detenu cannot rely on the date of receipt of the rejection letter through registered post and claim delay in receipt of the rejection letter as a ground to seek quashment of the detention order.

16.The aforementioned procedure should be followed scrupulously forthwith in all cases relating to detentions under Tamil Nadu Act 14 of 1982.

[C.V.K., J.] [J.S.N.P., J.]

29.08.2024

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

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2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Inspector General of Police,
Prisons, Chennai.
4. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
5. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
6. The Superintendent of Prison,
Trichy Central Prison,
Trichy District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND
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