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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

H.C.P.(MD) No.772 of 2024

Rajamani ... Petitioner

-vs-

1.The State of Tamil Nadu
rep.by the Principal Secretary
to Government
Home, Prohibition and
Excise Department
Fort St.George
Chennai-600 009

2.The District Magistrate and
District Collector
Collectorate, Dindigul

3.The Superintendent of Prison
Central Prison, Madurai

4.The Inspector of Police
Ottanchatram Police Station
Dindigul District ... Respondents

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 No. 93/2023, dated 09.11.2023, on the file of the second respondent, detaining

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the detenue under Section 2(f) of the Tamil nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents herein to produce the body of the petitioner's son, namely, Vaikkalsamy @ Minnal Vaikkalsamy, son of Palanisamy, aged about 45 years, now confined in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Suresh

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

O R D E R

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

The petitioner is the mother of the detenu viz., Vaikkalsamy @ Minnal Vaikkalsamy, son of Palanisamy, aged about 45 years. The detenu has been detained by the second respondent by his order No.93/2023, dated 09.11.2023, 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.

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.

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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 Nil. According to the learned counsel for the petitioner, though the representation was received by the Government on 15.12.2023, the rejection letter was sent to the detenu on 29.12.2023. There is a delay of six days in Column Nos.6 to 12 of the Proforma dated 30.07.2024 in considering the petitioner's representation. The said delay of six 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***.

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

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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 dated Nil was received by the Government on 15.12.2023 and the rejection letter was sent to the detenu on 29.12.2023. As per the proforma submitted the by the learned Additional Public Prosecutor, there is a delay of six days in Column Nos.6 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 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 six 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:

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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."

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 authorities concerned. But, in the instant case, the inordinate delay of six 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.

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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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention No.93/2023, dated 09.11.2023, passed by the second respondent is set aside. The detenu, viz., Vaikkalsamy @ Minnal Vaikkalsamy, son of Palanisamy, aged about 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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

31.07.2024

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

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To:

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to Government,
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2.The District Magistrate and
District Collector,
Collectorate,
Dindigul.

3.The Superintendent of Prison,
Central Prison,
Madurai.

4.The Inspector of Police,
Ottanchatram Police Station,
Dindigul District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AND
K.RAJASEKAR, J.
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