



H.C.P.(MD) No.1413 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM:

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

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Shanmugaiah

... Petitioner

-VS-

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

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

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

... 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, connected with the detention order of the second respondent in M.H.S.Confdl No.76/2023 dated 07.11.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Vignesh @ Vicky, son of Shanmugaiah @ Chellappa, aged about 24 years, now 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

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

The petitioner is the father of the detenu viz., Vignesh alias Vicky, son of Shanmugaiah alias Chellappa, aged about 24 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.76/2023, dated 07.11.2023, 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.



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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 14.11.2023. According to the learned counsel for the petitioner, though the representation is dated 14.11.2023, the same was received by the Government on 16.11.2023 and the rejection letter was sent to the detenu on 27.11.2023. There is a delay of 4 days in Column Nos.6 to 9A of the Proforma in considering the petitioner's representation. The said delay of 4 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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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 4 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 ***Rajammal's*** case, number of days of delay is immaterial and what is to be



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considered is whether the delay caused has been properly explained by the authorities concerned. But, in the instant case, the inordinate delay of 4 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 M.H.S.Confdl.No.76 of 2023 dated 07.11.2023, passed by the second respondent is set aside. The detenu, viz., Vignesh alias Vicky, aged about 24 years, son of Shanmugaiah alias Chellappa, 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.]

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

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