



H.C.P.(MD) No.1432 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM:

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

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R.Jeeva

... Petitioner

-VS-

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

... 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 in detention order in M.H.S.Confdl No.95 of 2023, dated 01.09.2023, on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son, namely, Selvakumar alias Chaina, son of Jeeva, aged about 27 years, now confined in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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., Selvakumar alias Chaina, son of Jeeva, aged about 27 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.95 of 2023, dated 01.09.2023 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 grounds that there is an unexplained delay in considering the representation of the petitioner, dated 16.11.2023 and also non-application of mind on the part of the detaining authority while passing the impugned detention order.

4. According to the learned counsel for the petitioner, though the representation is dated 16.11.2023, the same was received by the Government on 20.11.2023 and the rejection letter was sent to the detenu on 28.11.2023. There is a delay of 3 days in considering the petitioner's representation. The said delay of 3 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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5. The learned counsel appearing for the petitioner further submitted that the detenu was arrested in the ground case on 05.08.2023, but in the booklet at Page No.227 which is a translated copy of the bail application it has been mentioned that the bail petition stands adjourned to 11.07.2023. When the arrest itself is only on 05.08.2023, there cannot be a possibility of the bail petition being posted to a date prior to arrest. The detaining authority without applying his mind properly and without seeking for clarification has passed the detention order and thereby the detention order gets vitiated on ground of non-application of mind.

6. 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 with proper application of mind 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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7. 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 16.11.2023, which was received by the Government on 20.11.2023 and the rejection letter was sent to the detenu on 28.11.2023. As per the proforma submitted the by the learned Additional Public Prosecutor, there is a delay of 3 days in considering the representation of the petitioner and we find that the said delay remains unexplained.

8. 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 3 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu. Further, the document at Page No.227 discloses that the bail petition has been posted to 11.07.2023. When the arrest is on 05.08.2023, the bail application having been filed thereafter, there cannot be a possibility of the bail petition adjourned to a prior



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WEB COPY date 11.07.2023. No clarification has been sought for by the detaining authority and thereby the impugned order vitiates on account of non application of mind.

9. 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."

10. 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 3 days has not been properly explained.



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11. 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.

12. 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 and also on the ground of non-application of mind on the part of the detaining authority and hence, the impugned detention order is liable to be set aside.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl No.95 of 2023, dated 01.09.2023, passed by the second respondent is set aside. The detenu, viz., Selvakumar alias Chaina, aged



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about 27 years, son of Jeeva, 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.]
15.04.2024

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

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To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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