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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2013

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **T.RAJA**

**HABEAS CORPUS PETITION(MD) .No.620 of 2013**

A.Sulaiga Beevi : Petitioner

Vs.

1.The Secretary to the Government,  
Government of India,  
Ministry of Home Affairs,  
[Department of Internal Security],  
North Block, New Delhi.

2.The Secretary to Government,  
Public [Law and Order.F], Department,  
Government of Tamil Nadu, Fort.St.George,  
Chennai 9.

3.The District Collector and District Magistrate,  
Kanyakumari District,  
Kanyakumari. : Respondents

**PRAYER:** Petition is filed under Article 226 of the Constitution of India, to call for the entire records, connected with the Detention Order in P.D.No.02/N.S.A/2013, dated 21.05.2013, on the file of the third respondent and quash the same and direct the respondents to produce the body and person of the petitioner's son A.Abdul Sameem, S/o.Abuhanifa, aged about 24 years, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.M.A.Jinnah

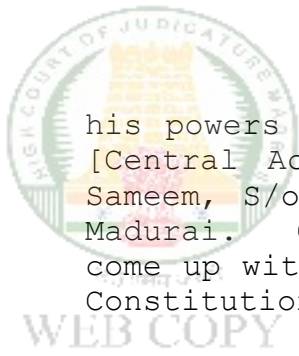
For Respondent No.1 : Mr.K.K.Senthilvelan  
Assistant Solicitor General of India

For Respondent Nos.2&3 : Mr.K.Chellapandian  
Additional Advocate General  
Assisted by Mr.C.Ramesh  
Additional Public Prosecutor

**O R D E R**

**T.RAJA, J.**

The petitioner is the mother of one Mr.A.Abdul Sameem, S/o.Abuhanifa, aged about 24 years. The District Collector and the District Magistrate, Kanyakumari District at Nagercoil, issued a detention order, by his proceedings, in P.D.No.02/N.S.A/2013, dated 21.05.2013, in exercise of



his powers conferred by Section 3(2) of the National Security Act, 1980, [Central Act 65/1980]), thereby, directing the detention of Mr.A.Abdul Sameem, S/o.Abuhanifa. The detenu has been now lodged at Central Prison, Madurai. Challenging the said order of detention, the petitioner has come up with the present Habeas Corpus Petition, under Article 226 of the Constitution of India.

2. After the Detention Order was passed, the detenu made a representation to the Government, on 06.06.2013, and the same was received by the Government on 12.06.2013, upon which remarks were called for from the Detaining Authority, on 12.06.2013, and the remarks were received by the Government only on 12.07.2013. Thereafter, the said representation was dealt with by the Under Secretary, on 16.07.2013, and the same was rejected by the Hon'ble Chief Minister, on 23.07.2013. The rejection letter was served on the detenu, on 24.07.2013. In this aspect, there was a delay of thirty days, out of which, eight days were holidays. Even if allowance is given for those eight days, which were holidays, still there was a delay of twenty two days. Seeking to quash the said Detention Order and to set the detenu at liberty, the petitioner has come up with the present Habeas Corpus Petition.

3 Even though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly focus his argument on the ground of delay between 12.06.2013 and 12.07.2013, in considering the representation of the detenu. Learned counsel for the petitioner would submit that there was a delay of twenty two days, as detailed above, and the same remains unexplained. According to the learned counsel, the said unexplained delay has caused serious prejudice to the detenu, and therefore, the Detention Order is liable to be quashed.

4. Learned Additional Advocate General has produced proforma, detailing the dates and events. In the said proforma, it has been admitted that the representation of the detenu was received, on 12.06.2013; remarks were called for from the Detaining Authority on 12.06.2013 and the remarks were received by the Government only on 12.07.2013. The remarks were dealt with by the Under Secretary on 16.07.2013 and the Hon'ble Chief Minister rejected the representation of the detenu on 23.07.2013.

5. From the narration of the above facts and the rival contentions, it is crystal clear that there was a delay of thirty days between 12.06.2013 and 12.07.2013 in considering the representation. Even if allowance is given to the eight days holidays, still, there remains a delay of twenty two days, which has not been explained by the respondents at all.

6. At this juncture, it is relevant to refer to few decisions of the Hon'ble Apex Court and the same are as follows:

(i). In **Rashid sk. v. State of West Bengal** reported in **1973 (3) SCC 476**, the Hon'ble Supreme Court has held as follows:

"The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of



affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion."

(ii). In **Tara Chand v. State of Rajasthan, 1980 (2) SCC 321 and Raghavendra Singh v. Superintendent, District Jail, 1986 (1) SCC 650**, the Apex Court held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal.

(iii) In **Aslam Ahmed Zahire Ahmed Shaik v. union of India and others reported in 1989 SCC (Crl) 554** the Hon'ble Supreme Court has held as follows:-

The supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation 11 days after it was handed over to the jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

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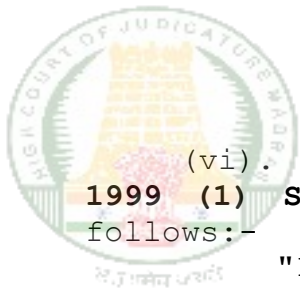
When it is emphasised and re-emphasised by a series of decisions of the Supreme Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5).

(iv) In **K.M.Abdulla Kunni v. Union of India, 1991 (1) SCC 476**, it is held as follows:-

"That part, it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

(v) In **Ram Sukrya Mhatre v. R.D.Tyagi, 1992 Supp (3) SCC 65**, the Hon'ble Supreme Court has held thus:-

the right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India.



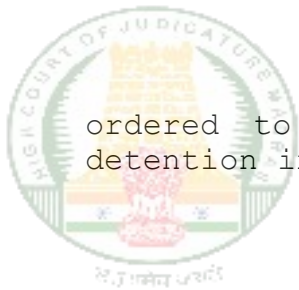
(vi). In yet another decision of the Hon'ble Apex Court reported in **1999 (1) SCC 417 (Rajammal v. State of Tamil Nadu)**, it is held as follows:-

"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. But that does not mean that the authority is preempted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to the permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.

7. In **Rekha Vs. State of Tamilnadu, (2011(5) SCC 244)**, it has been held that the personal liberty of a person is protected, under Article 21 of the Constitution of India. As it is so sacrosanct and so high in the scale of constitutional values, there is an obligation on the part of the Detaining Authority to show that, while passing the impugned order of detention, the procedures established by law have been meticulously followed. The procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

8. In view of the above settled position of law, the Detention Order is liable to be quashed on the sole ground of delay, as detailed above. In view of the fact that we are inclined to quash the proceedings on the ground of delay alone, we do not propose to go into the other grounds raised in the Habeas Corpus Petition.

9. In the result, the Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the third respondent, in his proceedings in P.D.No.02/N.S.A/2013, dated 21.05.2013, is quashed. The detenu, by name, A.Abdul Sameem, S/o.Abuhanifa, aged about 24 years, is



ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

SD/-

Assistant Registrar(CO)

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Sub Assistant Registrar

NB

To

- 1.The Secretary to the Government,  
Government of India,  
Ministry of Home Affairs,  
[Department of Internal Security],  
North Block, New Delhi.
- 2.The Secretary to Government,  
Public [Law and Order.F], Department,  
Government of Tamil Nadu, Fort.St.George,  
Chennai 9.
- 3.The District Collector and District Magistrate,  
Kanyakumari District at Nagarcoil.
- 4.The Superintendent central Prison,Madurai.
- 5.The Joint Secretary to Government  
Public (Law & order) Department,  
Fort St.Geirge,Chennai-9
- 6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,Madurai.

+1CC to Mr.K.K.SENTHIL VELAVAN, Advocate in SR.No. 59648

ORDER MADE IN  
HABEAS CORPUS PETITION (MD) .No.620 of 2013  
29.11.2013

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