

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.5.2016

CORAM

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.422 of 2016

P.Maheswari

..Petitioner/wife of the
detenu

Vs.

1. State of Tamil Nadu,
Represented by
Secretary to Government,
Home, Prohibition and
Excise Department,
Fort St.George,
Chennai - 1400 009.

2. The Commissioner of Police,
Greater Chennai Police,
Veperry, Chennai- 1400 007.

..Respondents

Petition filed under Article 2214 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order made in Memo No.148/BCDFGISSSV/20114 dated 19.02.2016 in detain the detenu under 2(F) of Tamil Nadu Act 14 of 19292, as a Goonda and quash the same and direct the respondent to produce the detenu Paulraj, son of Chellam, aged about 55 years, who is detained at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.R.Balachanderan

For Respondents: Mr.M.Maharaja, APP

O R D E R

[Order of the Court was made by G.CHOCKALINGAM, J.]

The petitioner is the wife of the detenu. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in No.148/B.C.D.F.G.I.S.S.S.V./2016 dated 19.02.2016.

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu. According to the learned counsel for the petitioner, the representation of the detenu dated 08.03.2016, has been received by the Government on 09.3.2016 and remarks have been called for from the detaining authority on 09.3.2016; but, the remarks have been received by the Government only on 04.4.2016, after a delay of 26 days. He adds that the file was dealt with by the Minister concerned on 17.5.2016 and the rejection letter was prepared and communicated to the detenu also on 19.5.2016. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 9 intervening holidays and even after giving concession as to the intervening holidays including Government Holidays, still there is a delay of 17 days, which remains unexplained. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in *Rajammal Vs. State of Tamil Nadu*, reported in (1999) 1 SCC 417.

3. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 09.3.2016 and that was forwarded to the Detaining Authority, calling for remarks on 09.3.2016 and remarks were received by the Government on 04.4.2016 and ultimately, the representation was considered and rejected on 18.5.2016 and the result of the consideration was communicated to the detenu on 19.5.2016. Therefore, according to the learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

4. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5. As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu dated 08.03.2016 was received by the Government on 09.3.2016 and remarks have been called for from the detaining authority on 09.3.2016. But, remarks have been received by the Government only on 04.4.2016, i.e., after a delay of 26 days and the case of the detenu was dealt with by the Minister concerned on 17.5.2016 and the same was rejected on 18.5.2016. From the above, it is clear that in between 09.3.2016 and 04.04.2016, [i.e., the intermittent days between the remarks called for and

the remarks received] there is a delay of 26 days. Even if we give concession to the 9 intervening holidays including Government holidays, namely 12.3.2016, 13.3.2016, 19.3.2016, 20.3.2016, 25.3.2016, 26.3.2016, 27.3.2016, 02.4.2016 and 03.4.2016, still there is a delay of 17 days, which remain 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 17 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7.In the judgment of the Hon'ble Supreme Court in Rajammal's case (cited supra), 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 considered is whether the delay caused has been properly explained by the authorities concerned. But, here 17 days delay has not been properly explained at all.

9.Further, in a recent decision in Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC, the 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 fact and law, 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 detenu.

11.Accordingly, the habeas corpus petition is allowed and the detention order passed by the second respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ga/kua

To

1. State of Tamil Nadu,
Represented by
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 1400 009.

2. The Commissioner of Police,
Greater Chennai Police,
Veperry, Chennai- 1400 007.

3. The Superintendent,
Special Prison for Women,
Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government (Law & order)
Fort St. George, Chenna-9.

5.The Public Prosecutor, High Court, Madras.

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ALA(CO)

EU 13.06.16