

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.3395 of 2014

S.Shobha
W/o.Soman

...Petitioner/
Wife of the deteneue

vs.

1. The Union of India,
represented by Secretary to Government,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 110 001.
2. The State of Tamil Nadu,
represented by Secretary to Government,
Public (Law & Order-F) Department,
Fort St.George,
Chennai - 9.
3. The District Collector and District Magistrate,
The Nilgiris District,
Udhagamandalam.
4. The Inspector of Police,
Cherambadi Police Station,
The Nilgiris District.

...Respondents

Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Habeas Corpus calling for the records
relating to the National Security Act detention order passed by the
third respondent in Cr.No.1/NSA/2014 dated 06.11.2014 and to quash

the same and direct the respondents to produce the body of the detenu, N.Soman, S/o.Narayanan, aged about 49 years, before this Court and set him at liberty, now detained at Central Prison, Coimbatore.

For Petitioner : Mr.M.Karunanithi

For Respondents : Dr.D.Simon,
Central Government Standing
Counsel [R1]

Mr.S.Shanmugavelayutham,
Public Prosecutor [R2 to R4]

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

Petitioner is the wife of the detenu, N.Soman, S/o.Narayanan, who has been detained under order of the third respondent passed in Cr.No.1/NSA/2014 dated 06.11.2014.

2. The alleged ground case has been registered against the detenu on 23.10.2014, by the Cherambadi Police Station, in Crime No.122 of 2014 for offence under Section 25(1)(a) and 25(1B)(a) Arms Act. Aggrieved by the order of detention, the present writ petition has been filed.

3. Amidst several grounds, learned counsel for petitioner contended that the petitioner's representation dated 24.11.2014 made to the first respondent had been disposed of after much delay. The representation had been made on 24.11.2014 and the same was disposed of only on 16.12.2014. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in Rajammal vs. State of Tamil Nadu [(1999) 1 SCC 417].

4. Resisting the contention of learned counsel for petitioner, learned Public Prosecutor submitted that the representation was received only on 01.12.2014, remarks were called for on 02.12.2014 and received on 08.12.2014. Thereafter, the file was sent to the concerned authorities and finally, the petitioner's representation was rejected on 16.12.2014. Learned Public Prosecutor further submitted that there had been four intervening holidays.

Therefore, according to learned Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

5. This Court has considered the submissions and perused the materials available on record.

6. 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."

7. 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 the delay has not been properly explained at all.

8. 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.

9. We are of the view that the delay in consideration of the petitioner's representation stands unexplained. The failure to consider the representation of the petitioner with promptitude is in violation of his fundamental rights enshrined under Articles 21 and 22(5) of the Constitution of India. On this ground alone, the impugned order of detention is liable to be set aside.

Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed against the detenu viz., N.Soman, S/o.Narayanan, by the third respondent in Cr.No.1/NSA/2014 dated 06.11.2014, 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-IV)

//True Copy//

Sub Assistant Registrar

gm

To

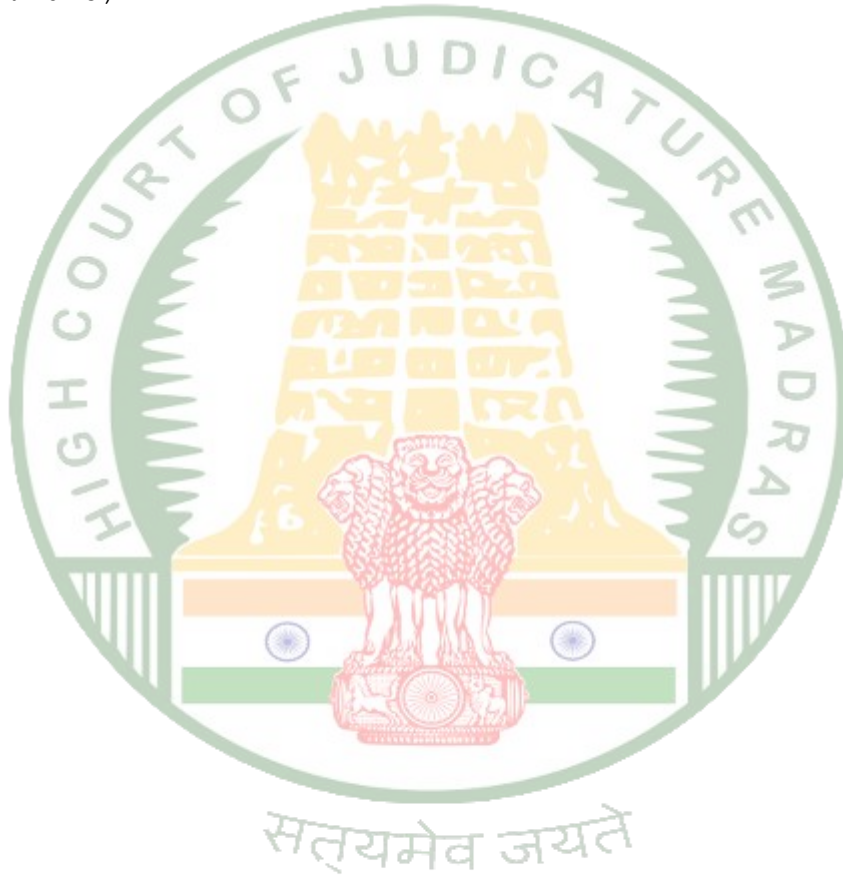
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6. The Secretary to Government,
(Public (Law & Order)),
Fort St. George,
Chennai - 9.

7. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.Public Prosecutor, Advocate SR.No. 45096

H.C.P.No.3395 of 2014

CTK (CO)
PSI (21.09.2015)



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