

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.100 of 2018

Rajalakshmi

.... Petitioner

vs.

1.State of Tamil Nadu,
rep.by its
Addl.Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2.The District Collector and District Magistrate,
The Nilgiris District,
Collector's Office,
Udhagamandalam-643 001

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to call for the records relating to the order of detention passed by the 2nd respondent, dated 11.10.2017, in Cr.M.P.No.08 of 2017 (Sexual Officer), quash the same and direct the respondents to produce the body of the Detenu Ilayaraja (male/aged 19), son of Selvaraj (now lodged at Central Prison, Coimbatore), before this Court and set him at liberty.

For Petitioner : Mr.Doraisamy, for
Mr.V.Elangovan

For Respondents : Mr.R.Ravichandran
Government Advocate (Crl.side)

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate (Crl.Side) for the Respondents.

2.The petitioner/mother of the Detenu has preferred the instant Habeas Corpus Petition before this Court in calling for the records pertaining to the Order of Detention passed by the Second Respondent, dated 11.10.2017, in Cr.M.P.No.08 of 2017 (Sexual Offender) and to quash the same. Further, the Petitioner has sought for passing of an order by this Court by directing the Respondents to produce the body of her Son Ilayaraja, aged 19 years, Son of Selvaraj, residing at Door No.15/641, Indco Nagar, Pandalur, The Nilgiris, now lodged at Central Prison, Coimbatore.

3.It comes to be known that as against the Petitioner's Son, Ilayaraja, aged 19 years, Son of Selvaraj, residing at Door No.15/641, Indco Nagar, Pandalur, The Nilgiris, a Detention Order dated 11.10.2017, was passed by the Second Respondent/District Magistrate and District Collector, Nilgiris, Udagamandalam, in Cr.M.P.No.08 of 2017.

4.The facts of the Ground Case are that the Inspector of Police, Udagamandalam Rural All Women Police Station, had filed a Report to the effect that on 24.08.2017, at 22.30 hours, the Inspector of Police Tmt.Shaidha, Udhagamandalam Rural All Women Police Station was present in the Police Station on duty and at that time, Arul Arokiyaraj, Son of Mariaprakash, residing at Door No.6/324, K.K.Nagar, M.Palada, Udhagamandalam, The Nilgiris, came to the Police Station along with his wife Sebasthiammal, his infant Blessy and his mother Reethammal and lodged a written complaint.

5.It transpires that on 24.08.2017, as usual, Arul Arokiyaraj went to work and at 8.00 hours in the night. When he came back from work to his house, his wife sobbed by hugging him and when he asked what had happened, she told him to ask his mother and hence he got frightened and when he enquired his mother, his mother cried and told him that in the morning when she was sitting at the door steps of their house with the infant Blessy in her lap, the neighbour Ilayaraja lured the infant by giving her a chocolate and went into his house taking the infant with him. The mother of the Detenu was sitting at the doorstep of the house and within a few minutes, she heard the infant crying aloud and so she rushed into Ilayaraja's house and found Ilayaraja standing naked without wearing even a single bit of dress etc. When she raised an alarm, the said Ilayaraja took a lungi, wore it and ran away. At 10.30 p.m.during night, the infant, sleeping in the cradle was crying continuously and when his mother told the complainant as to what she had witnessed, it came to light that Ilayaraja (Detenu) had committed a sexual assault on the infant and hence, he lodged a complaint to take appropriate action against the said Ilayaraja. Hence, a case was registered in Crime No.1 of 2017, on the file of the

Udhagamandalam Rural All Women Police Station, under Sections 3 and 4 of Prevention of Children from Sexual Offences, Act, 2012 and alteration report was placed before the Learned Mahila Judge, Nilgiris, Udhagamandalam.

6. In fact, the case against the Detenu Ilayaraja, which was registered in Crime No.1 of 2007, under Sections 3, 4 and 8 read with Section 7 of Protection of Children from Sexual Offences Act, 2012, was taken on file by the Learned Mahila Judge, in Special Calendar Case No.13 of 2017 and the case is in part heard stage, where P.Ws.1 to 12 were examined. The Detenu filed a bail application before the Learned Mahila Judge, Udhagamandalam in C.M.P.No.786 of 2017 dated 16.09.2017 and the same was dismissed on 03.10.2017.

7. The contention advanced on behalf of the Petitioner is that the Second Respondent had not looked into the materials placed before him in a proper perspective and mechanically had passed the Order of Detention against the Detenu. Further, the Detenu's mother namely, the petitioner, made a representation on 10.11.2017 before the First Respondent to revoke the Order of Detention and to release her son, which was received by the First Respondent on 14.11.2017, however, the said representation was disposed of on 18.12.2017. Hence, there is a delay in disposing of the representation, which vitiates the Order of Detention passed by the Second Respondent.

8. Yet another plea taken on behalf of the Petitioner is that the Detenu filed Bail Petition in C.M.P.No.786 of 2017, before the Learned Sessions Judge of Mahila Court, Udhagamandalam and the same was dismissed on 03.10.2017 and when the Bail Application of the Detenu was dismissed, there is no possibility of coming out from jail and as such, the Detention Order is liable to be quashed.

9. The Learned Counsel for the Petitioner in support of the contention that there is a delay of more than 30 days in considering the representation of the Petitioner and in view of the delay, which has not been explained by the Respondent in a proper manner, there is a violation of Article 22(5) of the Constitution of India and as such, the Detention Order dated 11.10.2017 passed by the Second Respondent is liable to be set aside, in the interest of justice.

10. In support of the contention that there was a delay of 34 days in considering the representation of the Petitioner, the Learned Counsel appearing for the Petitioner relies on the Division Bench Order of this Court dated 10.01.2013 in H.C.P.No.1400 of 2012 between Selvi vs. 1. State of Tamil Nadu, represented by Secretary to Government, Home, Prohibition and

Excise Department, Fort St.George, Chennai and another; wherein, at paragraph No.8.3 to 8.18, it is observed as under:

"8.2. In Ramamurthy Vs. The State of Tamil Nadu (2006 (4) CTC 181), this Court had set aside the order of detention on the ground of delay in considering the representation made on behalf of the detenu.

8.3. In a decision of the Constitution Bench of the Supreme Court, in Jayanarayan Sukul Vs. State of West Bengal, (1970 (1) SCC 219), it has been held as follows:-

"The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril, immediate action should be taken by the relevant authorities."

8.4. The Supreme Court, in Mahesh Kumar Chauhan alias Banti Vs. Union of India & Others, (1990) 3 SCC 148, while dealing with a case of preventive detention, has observed that an undue and unexplained delay in the disposal of the representation of the detenu is in violation of Article 22(5) of the Constitution of India, rendering the detention order invalid.

8.5. In Rama Dhondu Borade Vs. V.K.Saraf, Commissioner of Police and Others, (1989) 3 SCC 173, the Supreme Court has observed that a representation of a detenu, whose liberty is in peril, should be considered and disposed of, as expeditiously as possible. The continued detention will render itself impermissible and invalid as being violative of Article 22(5) of the Constitution of India. If any delay occurs in the disposal of a representation, such delay should be explained, by the appropriate authority, to the satisfaction of the Court.

8.6. In the decision, in Venkatesan @ Maya Venkatesan (2007(1) MLJ (Crl.) 1176), it has been held that it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range

of the delay, but how it is explained by the Authority concerned.

8.7. In the decision, in Sumaiya Vs. The Secretary to Government, Prohibition and Excise Department, Government of Tamilnadu, Fort St. George, Chennai-9 and another 2007(2) MWN (Cr.) 145 (DB), this Court had held that an unexplained delay of three days in the disposal of the representation, made on behalf of the detenu, would be sufficient to set aside the detention order.

8.8. In G.Kalaiselvi Vs. The State of Tamil Nadu (2007(5) CTC 657), a Full Bench of this Court had held that it is by now well recognised that the authorities concerned are duty bound to afford to the detenu an opportunity of making a representation and such right of the detenu, obviously, encompasses the corresponding duty that the representation must receive careful and expeditious attention and should be disposed of without any unnecessary delay, and the result of such representation should also be communicated without any such delay.

8.9. 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 safe guards 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.

8.10. In K.M.Abdulla Kunhi Vs. Union of India, (1991(1) SCC 476), it had been held that any unexplained delay in the disposal of the representation made on behalf of the detenu would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

8.11. In fact, this Court, in its order, dated 9.11.2011, in Smt.Sowdun Bivi Vs. The State of Tamilnadu (H.C.P.No.108 of 2011), has clarified the position relating to the issue regarding the

consideration of the representation made on behalf of the detenu, referring to the Full Bench decision of this Court, in Rajammal Vs. State of Tamil Nadu and another (1999 AIR SCW 139). Thus, it is clear, from the catena of cases decided by the Supreme Court, that there is an obligation cast on the Detaining Authority, as well as the State Government, to consider the representation made on behalf of the detenu, as early as possible, as per the mandate enshrined in Clause (5) of Article 22 of the Constitution of India.

8.12. In Rashid sk. v. State of West Bengal, reported in, 1973 (3) SCC 476, the Supreme Court has held that the 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.

8.13. In Ram Sukrya Mhatre v. R.D.Tyagi and Others, 1992 Supp (3) SCC 65, the Supreme Court has held thus;-

"...the right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal not only by the State Government under the relevant provision of the Statute, but also by the Central Government. But in each case it is one of fact to be ascertained whether the Central Government or State Government, as the case may be, has caused delay due to negligence, callous inaction, avoidable re-tapism and undue protraction by the authorities concerned. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India."

8.14. In Aslam Ahmed Zahire Ahmed Shaik v. union of India and others, reported in 1989 SCC (Cr1) 554, the Supreme Court has held that an avoidable and unexplained delay in the disposal of the representation would result in rendering the continued detention of the detenu illegal and constitutionally impermissible.

8.15. In Tara Chand v. State of Rajasthan and Others, 1980 (2) SCC 321 and Raghavendra Singh v. Superintendent, District Jail, Kanpur & Others, (1986) 1 SCC 650, the Apex Court has held that any inordinate and unexplained delay on the part of the Government,

in considering the representation, renders the detention illegal.

8.16. In *Rajammal v. State of Tamil Nadu & Others*, 1999 (1) SCC 417, 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.

8.17. In *K.M.Abdulla Kunhi v. Union of India*, (1991) 1 SCC 476, it has been held as follows:-

".... 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."

8.18. 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."

11. Per contra, it is the submission of the Learned Government Advocate (Crl.Side) that on 24.08.2017, at about 11.30 hours, the Detenu had the audacity to entice an infant, namely Blessy, aged 2 years, sitting at the door step of the neighbouring house by enticing her with a chocolate to his room and lustily committed sexual offence against the said innocent baby and after hearing the cries, her grandmother had rescued the baby and the cold hearted crime committed by the Detenu had created panic and fear psychosis among the women and children in the entire District.

12. The Learned Government Advocate (Crl.Side) appearing for the Respondents refers to a decision of this Court in *R.Elusammal vs. State of Tamil Nadu and Others* reported in 2017 (2) TNLR 441, wherein it is held that gravity of offences under

POCSO Act, even in a solitary incident, Detention Order can be passed and at Paragraph 12, it is observed as under:-

"12.A person who has deprived another person completely of her liberty forever and has endangered the liberty of her family, has no right to ask the Court to uphold his liberty. Liberty is not a one sided concept, nor does Article 21 of the Constitution contemplates such a concept. Lawlessness is the order of the day. Even the kith and kin, close relatives, friends, neighbours and passers-by who happen to witness the occurrence are threatened and though initially give statements to the police, invariably turn hostile, apparently because of the threat meted out to them by the hardened and professional criminals and gangsters. It is the hard reality that the State machinery is not able to protect or guarantee the life and liberty of common man."

13.The Learned Government Advocate (Crl.Side) for the Respondents projects an argument that it is the fundamental right of an accused to apply for bail at any time till the disposal of the criminal Case and as such, the contra plea taken on behalf of the Petitioner that there is no possibility for the Detenu coming out on bail since his Bail Application was dismissed by the Trial Court on 03.10.2017, is not tenable.

14.Continuing further, the Learned Government Advocate (Crl.Side) points out that the representation submitted by the Petitioner to the First Respondent on 10.11.2017 along with the representation submitted by the Detenu to the First Respondent on 14.11.2017 was duly considered by the First Respondent and by an Order dated 08.01.2018, the same was disposed of as per G.O. (D) No.81, Home, Prohibition and Excise (X) Department.

15.The Learned Government Advocate (Crl.Side) for the Respondents proceeds to make a mention before this Court that the representation of the Detenu (on behalf of the Detenu), dated 10.11.2017 was received by the Government on 14.11.2017 and remarks on the said representation were called for from the Second Respondent/District Magistrate and District Collector, Nilgiris District, Udthagamandalam, on 14.11.2017 and the remarks were received by the Government from the District Magistrate and District Collector, Nilgiris District, Dhagamandsalam on 20.11.2017. Furthermore, the representation was examined by the concerned Section and then by the Under Secretary and Deputy Secretary on 21.11.2017 itself. The entire file along with the representation and the remarks were forwarded to the concerned authority to consider the representation, on 21.11.2017 and the

file was received by the Deputy Secretary on 18.12.2017 and the letter regarding the rejection of the representation was prepared on 18.12.2017 and the same was dispatched on 18.12.2017 itself. Moreover, based on the opinion furnished by the Advisory Board, the Government had confirmed the Detention Order dated 08.01.2018. In effect, the stand of the respondents is that the delay in considering the representation is due to prevailing situations at that time and the same is an inevitable also it is pointed out on behalf of the respondents that the delay in consideration of the representation is neither wilful nor wanton but due to the Administrative reason.

16.It is true that the Detenu is involved in heinous crime that he had committed against the innocent child, namely, Blessy of the complainant and also that the case in Special Calendar Case No.13 of 2017 on the file of the Mahila Court, Udhagamandalam, is in part heard stage. It cannot be gain said that liberty is not a one way concept and at the same time, it cannot be brushed aside that the mandate of Article 22(5) of the Constitution clearly points out that the Detenu, against whom a preventive detention is passed, should be afforded an earliest possible opportunity to make a representation as per decision of the Hon'ble Supreme Court in *Pebam Ningol Mikoi Devi vs. State of Manipur and Others* reported in 2010(9) SCC page No.618.

17.As far as the present case is concerned, there appears to be a delay of 34 days from the date of the representation of the Petitioner being received by the Government on 14.11.2017. In reality, the file ultimately was received by the Deputy Secretary on 18.12.2017 and after preparing their letter relating to rejection of the representation, the same was dispatched on 18.12.2017. In this regard, there is a delay of 34 days, which has not been satisfactorily explained to the subjection conscience of this Court. As such, the delay of 34 days is fatal issue. On this ground alone, this Court is of the considered view that the impugned Detention Order is liable to be quashed.

18.In so far as the plea of the Petitioner is concerned that in the Detention Order, the Second Respondent had observed that "Hence, I presume that there is a real possibility of the accused Thiru Ilayaraja coming out on bail in the case of Udhagamandalam Rural All Women Police Station Crime No.01 of 2017 under Sections 3, 4 and 8 read with Section 7 of Protection of Children from Sexual Offences Act, 2012. If he is released on bail, he may again indulge in further such activities in future", it is to be pointed out that these observations, at best, can only be termed as Ipse Dixit observations based on apprehension of the Second Respondent, especially in the absence of credible information or

cogent reasons apparent on record and therefore, these observations cannot be taken advantage of by the petitioner, because of the simple reason that the Detaining Authority had passed the Detention Order, according to compelling necessity, with a view to ensure that the Detenu does not repeat this kind of act in future.

19.As a matter of fact, Law provides for an avenue to an accused to file any number of Bail Petitions after the dismissal of the earlier Bail Application and till he obtains the relief of Bail, an accused is entitled to explore all legal avenues open to him to come out on 'Bail'. If the State Government opines that the Detenu does not deserve 'Bail' in a given case, it can resist the Bail Petition. At any cost, the Detenu cannot be interdicted from approaching the Court for Bail by passing an order of Detention.

20.Be that as it may, this Court, on a careful consideration of respective contentions and taking note of the fact that in the instant case, the delay that has occurred from 14.11.2017, the date on which, the Government had received the representation of the Petitioner dated 10.11.2017, till the rejection was passed on 18.12.2017, has not been properly explained to the subjective satisfaction of this Court, this Court is left with no other option, but to come to an inescapable conclusion that the delay of 34 days in considering the representation of the Petitioner dated 14.11.2017 has caused prejudice to the Detenu Ilayaraja and as such this Court is constrained to quash the impugned order of detention dated 11.10.2017. Viewed in that perspective, the Habeas Corpus Petition succeeds.

In fine this Habeas Corpus Petition is allowed. The detention order dated 11.10.2017, passed in Cr.M.P.No.08 of 2017, by the detaining authority against the detenu, by name, Ilayaraja, son of Selvaraj, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Addl.Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2.The District Collector and District Magistrate,
The Nilgiris District,
Collecctor's Office,
Udhagamandalam-643 001

3.The Joint Secretary to Government
Public Law And Order
Fort St.George
Chennai.

4.The Superintendent of Prison,
Central Prison, Puzhal, Coimbatore.

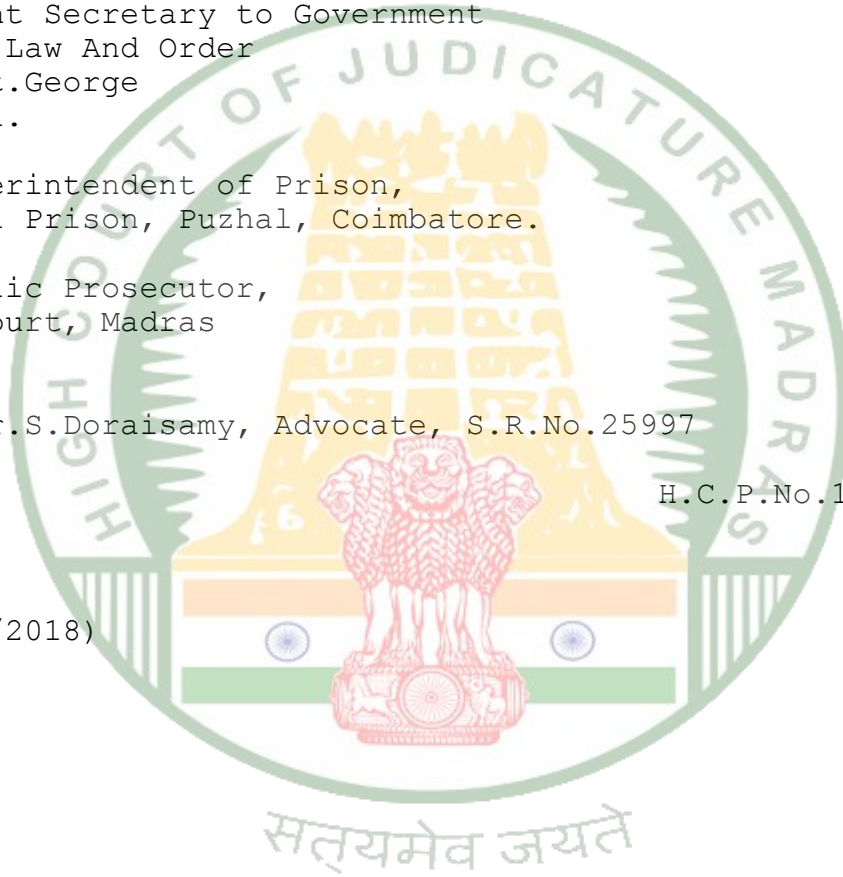
5.The Public Prosecutor,
High Court, Madras

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.25997

H.C.P.No.100 of 2018

AK (CO)

RRK (11/04/2018)



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