

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1001 of 2018

H.Madeena
W/o.Haneefa

.... Petitioner/Mother of Detenue

vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600007.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of second respondent in BCDFGISSV No.226/2018 dated 16.04.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's son by name Sheik Mohamed S/o.Haneefa, aged about 28 years, detained at Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Ganeshmurthy

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the mother of the detenu Sheik Mohamed S/o.Haneefa, who has been branded as "Goonda" under the Tamil

Nadu Act 14 of 1982 and detained under orders of second respondent passed in No.BCDFGISSSV No.226/2018 dated 16.04.2018. Such order is under challenge herein.

2. The alleged ground case has been registered against the detenu in Crime No.50 of 2018 on the file of S-1 St.Thomas Mount Police Station, for offences u/s.341, 419 and 392 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. We have heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. Learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. In support of his contention, learned counsel for petitioner relied on the judgment of the Hon'ble Apex Court in Rajammal vs. State of Tamil Nadu, [(1999) 1 SCC 417].

5. Learned Additional Public Prosecutor would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

6. The Detention Order in question was passed on 16.04.2018. The petitioner submitted three representations dated 16.05.2018 and the same were received on 18.05.2018, 22.05.2018 and 24.05.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.05.2018 and 22.05.2018. The remarks were duly received on 24.05.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.06.2018 and sent to the detenu on 04.06.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 7 days, of which 2 days were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 6 days, of which 2 days were Government holidays and hence, there was yet another delay of 9 days in considering the representations.

8. 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.'

9. 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 9 days delay has not been properly explained at all.

10. 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.

11. 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 representations of the detenu.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by second respondent against the detenu Sheik Mohamed S/o.Haneefa in No.BCDFGISSSV No.226/2018 dated 16.04.2018 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-VIII)

//True copy//

Sub Assistant Registrar

gm

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,

Secretariat, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600007.

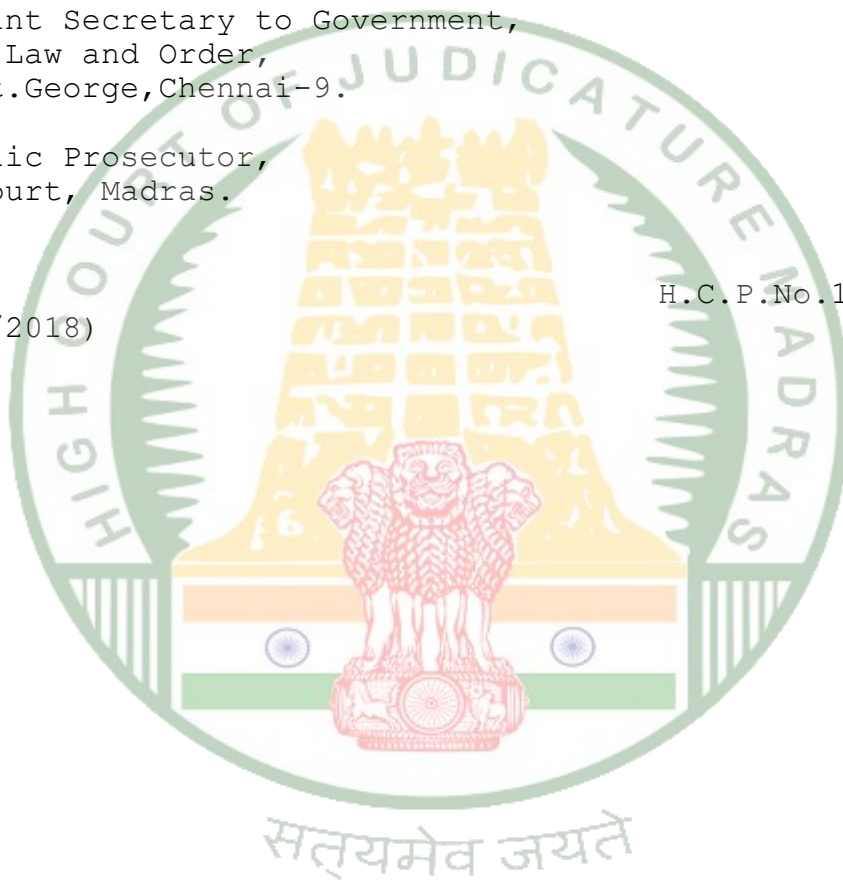
3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4. The Joint Secretary to Government,
Public Law and Order,
Fort.St.George,Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

GMV (24/10/2018)

H.C.P.No.1001 of 2018



WEB COPY