

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1053 of 2018

V.Usha
W/o.K.Velu

... Petitioner

vs.

1.The State represented by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

2.The District Magistrate and District Collector,
Tiruvallur District,
Tiruvallur.

...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 culminating in the detention of the petitioner's husband Velu S/o.Kanagasabapathy, aged 47, detained at Central Prison II, Puzhal, Chennai, under Act 14 of 1982 vide detention order dated 20.04.2018 on the file of second respondent herein made in proceedings in BCDFGISSSV No.13 of 2018, quash the same as illegal and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter, set him at liberty from Central Prison II, Puzhal, Chennai.

For Petitioner : Mr.V.Murugesan

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 wife of the detenu Velu S/o.Kanagasabapathy, who has been branded as 'Sand Offender' under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in BCDFGISSSV No.13/2018 dated 20.04.2018. Such order is under challenge herein.

2. The detenu came to adverse notice in Crime No.138 of 2016 on the file of E3 Minjur Police Station for offence u/s.36 (1)(A) of MMDR Act. The ground case has been registered against the detenu in Crime No.159 of 2018 on the file of Minjur Police Station, for offences u/s.379, 430, 353, 307 IPC r/w 36(A) MMDR Act.

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 representations made by petitioner were 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 representations, 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 20.04.2018. The petitioner submitted representations dated 30.05.2017 and 14.08.2018 and the same were received on 04.06.2018 and 20.08.2018 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on the same dates. The remarks were duly received on 13.06.2018 and 14.09.2018 respectively. Thereafter, the Government considered the matter and passed the orders rejecting the petitioner's representation on 18.06.2018 and 03.10.2018 and sent to the detenu on 19.06.2018 and 04.10.2018.

7. It is the contention of petitioner that regards first representation is concerned, there was an inordinate delay of 9 days, of which 2 days were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 4 days in considering the representation. As regards second representation is concerned, there was an inordinate delay of 24 days, of which 7 days were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 14 days, of which 5

days were Government holidays and hence, there was further delay of 11 days in considering the representation.

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 the 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 the second respondent against the detenu Velu S/o.Kanagasabapathy in BCDFGISSSV No.13/2018 dated 20.04.2018 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 IX)

//True Copy//

Sub Assistant Registrar

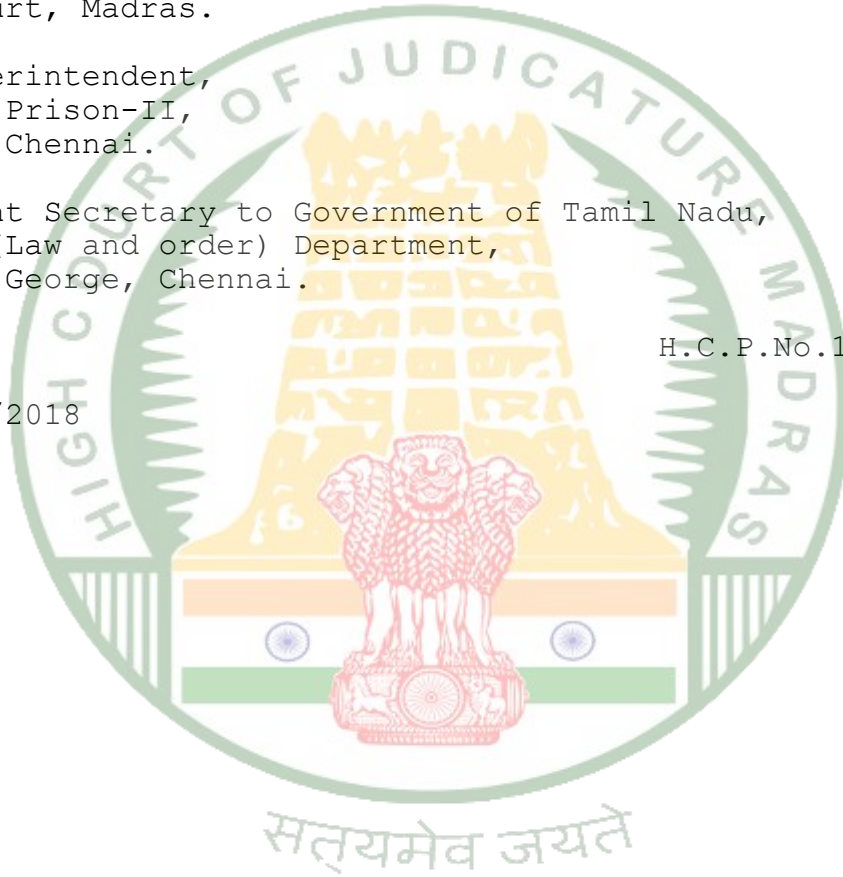
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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
- 2.The District Magistrate and District Collector,
Tiruvallur District,
Tiruvallur.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison-II,
Puzhal, Chennai.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public (Law and order) Department,
Fort St.George, Chennai.

H.C.P.No.1053 of 2018

rrs 31/10/2018



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