

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P. No.207 of 2018

Rajeswari.R

.. Petitioner

vs.

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to produce the body of the detenu namely, Senthil Kumar, son of Rajendran, aged about 33 years before this Court and set him at liberty forthwith, by calling for the records pertaining to the detention order in Cr.M.P. No.04/2018 dated 09.01.2018 passed by the second respondent, quash the same as illegal, incompetent and ultra vires.

For petitioner : M/s.T.Dharani

For respondents : Mr.R.Ravichandran,
Government Advocate

ORDER

(Order of the Court made by **S.M.SUBRAMANIAM, J.**)

The order of detention passed by the second respondent in Proceeding No. Cr.M.P. No.04/2018 dated 19.1.2018 is under challenge in this Habeas Corpus Petition.

2.The order of detention was issued based on three adverse cases registered against the son of the petitioner and the ground case was registered on 28.10.2017. In respect of the first adverse case, the same was registered under Section 379 I.P.C. on 15.05.2015. The second case was also registered under Section 379 I.P.C. on 15.05.2015.

3.We are of the opinion that these two cases registered in the year 2015 are remote in nature. Therefore, the third adverse case registered on 23.10.2017 alone shall form part of the detention order. In respect of the ground case, no doubt, the allegations are serious. However, the learned counsel appearing on behalf of the petitioner contended that there was an enormous delay on the part of the competent authorities in considering the representation submitted on behalf of the detenu.

4.The learned Government Advocate submitted the relevant dates in respect of consideration of the representation submitted on behalf of the detenu. The representation submitted on behalf of the detenu had been received by the authorities on 24.1.2018. Remarks were called for on the same day on 24.01.2018. However, the said remarks were received on 16.02.2018 and the files were submitted for further consideration before the Under Secretary and the Deputy Secretary on the same day on 16.02.2018.

5.It is pertinent to note that the file was placed before the Honourable Minister for further consideration on 16.02.2018. However, the same was approved only on 09.03.2018 after a lapse of about 21 days. Thereafter, the rejection letter was prepared on 12.03.2018 and the same was sent to the detenu on 13.03.2018.

6.The learned Government Advocate appearing on behalf of the respondents made a submission that there were holidays in between and the delay is meagre.

7.We have calculated the delay and it comes around 15 days. Such a huge delay in considering the representation by the competent

authorities are vital and therefore, the said benefit is to be extended to the detenu for the purpose of considering the present Habeas Corpus Petition.

8.The Courts have repeatedly held that when a person is detained under the prevention laws, consideration of the representation must be done without any undue delay. When the life and liberty of a person is in stake, the representations submitted raising certain grounds are to be considered immediately.

9.The Apex Court in the case of **Rajammal vs State of Tamil Nadu (1999 1 SCC 417)** 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.

10.The Apex Court also held that the delay in considering the representation is a ground for quashing the order of detention. In the present case, there is a delay of 15 working days in considering the representation submitted on behalf of the detenu. However, the delay

of 21 days has not been properly explained by the respondents.

11. In this view of the matter, we are inclined to consider the present petition and accordingly the order of detention order passed by the second respondent in Cr.M.P. No.04/2018 dated 09.01.2018 is quashed and the Habeas Corpus Petition stands allowed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

[S.M.S.,J.] [S.R.T.,J.]
04.05.2018

vga/tsi

To

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
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Fort St. George, Chennai-9.

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

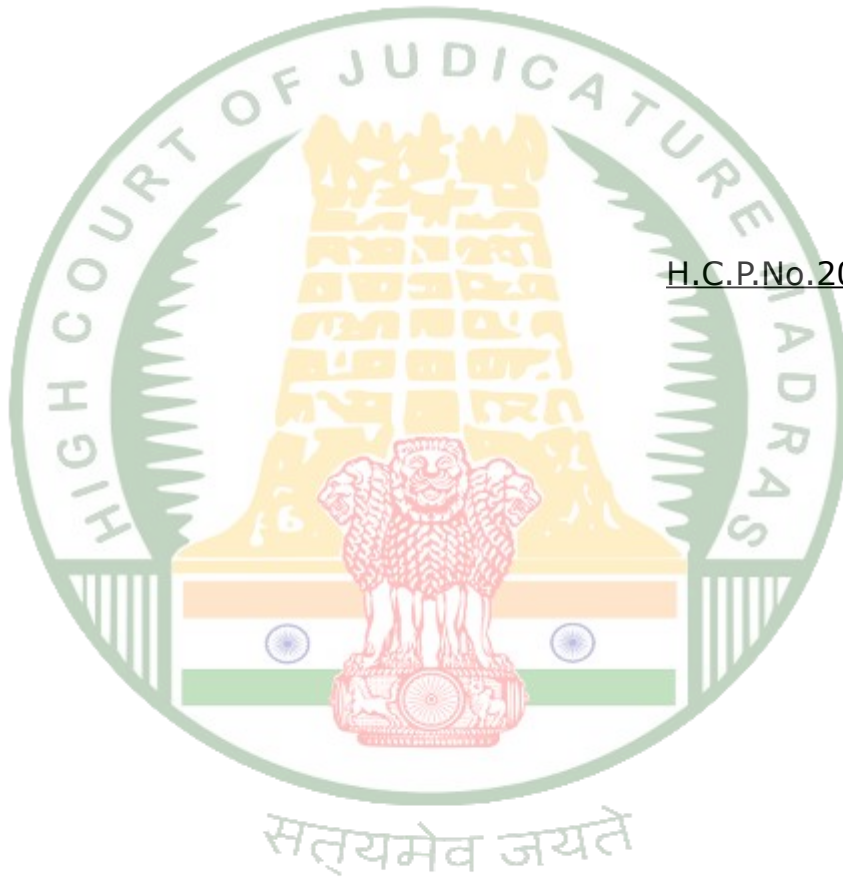
3. The Superintendent,
Central Prison, Tiruchirappalli.

4. The Public Prosecutor, High Court, Madras.

**S.M.SUBRAMANIAM,J.
and**

S.RAMATHILAGAM,J.

vga/tsi



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