

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.05.2018

CORAM

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAN
AND
THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.30 of 2018

C.Emaya Bharathi Petitioner/Son of detenue

Vs

1. State of Tamil Nadu
Represented by its Secretary
Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Commissioner Office
Salem City, Salem.
3. The Deputy Superintendent of Police
NIB CID Wing, Salem
Salem District. Respondents/Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the Detention Order dated 30.12.2017 in Detention Order C.M.P.No.93/D.O/Salem City/2017 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Vasantha, W/o.Chinna Thambi, Hindu, aged about 50 years, who is now confined in Special Prison for Women, Coimbatore before the Hon'ble Court and set her at liberty.

For Petitioner : Mr.R.Thamaraiselvan
For Respondents: Mr.R.Ravichandran
Government Advocate
for R1 to R3

O R D E R

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

The present Habeas Corpus Petition has been preferred against the Detention Order issued by the Commissioner of Police, Salem City in Proceeding dated 30.12.2017.

2.The learned counsel appearing on behalf of the petitioner, made a submission that there were two adverse cases were already registered against the detainee and in the ground case, the detainee was not in possession of the intoxicate drug of Ganja. However, the same was confiscated from another person and therefore, there is an erroneous implication of the detainee in the criminal case. The learned counsel for the petitioner further contended that there is a huge delay in considering the representation submitted on behalf of the detainee.

3.The order of detention was issued by the second respondent on 30.12.2017 and the representation in this regard was submitted on behalf of the detainee on 13.02.2018. Remarks were called for on 13.02.2018 itself. However, the required remarks were received by the authorities on 19.02.2018. Consequently, the file was submitted for further consideration on 20.02.2018. The Under Secretary to the Government, who dealt with the file in relation to the present detainee, scrutinised the same and thereafter, the Deputy Secretary to the Government also scrutinised the same on the same day on 20.02.2018. However, there is a delay on the part of the Hon'ble Minister in dealing with the file. However, as per the Memo submitted by the Under Secretary to the Government, the Under Secretary had dealt with the file on 20.02.2018 and the Hon'ble Minister for the Electricity, P & E dealt with the file on 09.03.2018 and signed on the same day. Accordingly, the rejection letter was prepared on 12.03.2018 and the same was sent to the detainee on 13.03.2018.

4.The learned Government Advocate appearing on behalf of the respondents states that there were four Government holidays in between the dates from 20.02.2018 to 09.03.2018. Therefore, there is no delay on the part of the authorities in rejecting the representation submitted by the detainee on 13.02.2018.

5.We are of the considered opinion that the preventive detention laws are to be considered in the light of the personal liberty ensured under Article 21 of the Constitution of India. Undoubtedly, the case registered against the petitioner is of serious in nature. However, the long delay in considering the representation infringes the right of the detainee and the Constitutional Courts have repeatedly emphasised that the authorities competent, while passing an order of detention must be cautious in dealing with the file and the same should be dealt with, in accord with law and without causing any undue delay. The delay in considering the representation is also a ground to be considered for the purpose of quashing the Detention Order. In *Rajammal Vs State of Tamil Nadu* [(1999) 1 SCC 417], the Hon'ble Supreme Court of India laid down the following principles :

"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."

6.As per the legal principles settled by the Apex Court in the judgment cited supra, number of days is immaterial, however, what is to be considered is as to whether the delay caused has been explained by the competent authorities concerned or not. In the present case on hand, there is a delay of about 17 days. Out of which, four days are Government Holidays. Thus, there is a solid delay of 13 days, admittedly, by the competent authority and the learned Government Advocate in this regard, filed an additional counter affidavit stating that the representation of C.Emaya Bharathi, on behalf of the detenu was received by the Government on 13.02.2018 through the Advisory Board. Remarks on the representation was called for from the Commissioner of Police, Salem City on 13.02.2018 and the remarks was received by the Government from the Commissioner of Police, Salem City on 19.02.2018. The representation was examined by the concerned Section and then, by the Under Secretary and the Deputy Secretary on 20.02.2018 itself. The entire file along with the representation and the remarks were forwarded to the concerned authority to consider the representation on 20.02.2018. The file was received by the Deputy Secretary on 12.03.2018. The letter regarding the rejection of the representation was prepared on 12.03.2018 and the same has been despatched on 13.03.2018. It is further submitted that based on the opinion given by the Advisory Board, the Government have confirmed the Detention Order in G.O.(Rt).No.1170/H, P&E(XIV)/2018 dated 29.03.2018. Citing these factors, the learned Government Advocate submitted that there was no delay on the part of the authorities, however, this Court is unable to accept the said contention, in view of the fact that the Deputy Secretary to the Government dealt with the file on 20.02.2018 and the Hon'ble Minister signed the files only on 09.03.2018 and the delay in between had not been explained by the respondents. Even in the additional counter affidavit filed, except by narrating the dates and events, the reason for delay has not been provided in the additional counter affidavit filed on behalf of the respondents. Thus, the delay of 13 days in dealing with the representation is to be considered as vital as far as the validity of the Detention Order passed by the competent authority.

7. Accordingly, this Habeas Corpus Petition stands allowed and the Detention Order passed by the authority in proceeding C.M.P.No.93/D.O./Salem City/2017 dated 30.12.2017 is quashed. The detainee Tmt.Vasantha, aged about 50 years, W/o.Chinnathambi is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Secretary
State of Tamil Nadu
Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Commissioner Office
Salem City, Salem.
3. The Deputy Superintendent of Police
NIB CID Wing, Salem
Salem District.
4. The Superintendent,
Special Prison for women,
Coimbatore.
5. The Joint Secretary to Government,
Public(Law & Order)
Fort St.George Chennai-9.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Thamaraiselvan, Advocate sr.no.32627

nr 03/05/2018

HCP No.30 of 2018