

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

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

H.C.P.No.1389 of 2018

Gouri Manohari
W/o.D.Viswanathan @ Viswa ... Petitioner

vs.

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

2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records leading to the detention of D.Viswanathan @ Viswa S/o.Durairaj, aged about 30 years, under Act 14/1982 vide detention order dated 24.04.2018 on the file of second respondent made in proceedings No.C.No.46/G/IS/2018, quash the same, consequently direct the respondents herein to produce the body and person of D.Viswanathan @ Viswa, S/o.Durairaj, aged about 30 years, who is lodged at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.C.D.Sugumar

For Respondents: Mr.M.Mohmed 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 viz., D.Viswanathan @ Viswa S/o.Durairaj, who has been branded as "GOONDA" under the

Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in C.No.46/G/IS/2018 dated 24.04.2018. Such order is under challenge herein.

2. The detenu came to adverse notice in the following cases:

Sl.	Police Station and Crime No.	Section of law
1	Tiruppur District, Uthukuli Police Station, Crime No.241/2017	392 IPC
2	Tiruppur District, Uthukuli Police Station, Crime No.265/2017	457 and 380 IPC
3	Tiruppur District, Vellakoil Police Station, Crime No.337/2017	392 IPC
4	Coimbatore City, D-4 Kuniyammuthur Police Station, Crime No.193/2018	379 IPC

The ground case has been registered against the detenu in Crime No.245 of 2018 on the file of D-1 Ramanathapuram Police Station for offences u/s.392 r/w 397 and 506(i) IPC.

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. The 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 24.04.2018. The petitioner submitted a representation dated Nil and the same was received on 06.06.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 18.06.2018. Thereafter, the Government considered the matter and passed the

order rejecting the petitioner's representation on 26.06.2018 and served on the detenu on 30.06.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 11 days, of which 4 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 7 days, of which 2 days were Government holidays and thus, there was 12 days delay 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. Here 12 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 representation of the detenu.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., D.Viswanathan @ Viswa S/o.Durairaj, in C.No.46/G/IS/2018 dated 24.04.2018, is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.
- 2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison,
Coimbatore.
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.1389 of 2018

srg 28/11/2018