

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

H.C.P.No.1665 of 2018

Santhi ... Petitioner/Wife of the detenu

... Vs ...

1.The Sate of TamilNadu,
Rep.by Principal Secretary to Government,
Home, Prohibition & Excise Department,
Fort.St George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
O/o.Commissioner of Police,
Vepery, Chennai - 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records made in BCDGESSV No.625/2018 dated 01.08.2018 on the file of 2nd respondent herein and QUASH the same as illegal and direct the respondent to produce detenu viz., Ramu S/o.Rajagopal aged about 40 years residing at No.9/36, 5th street, Jeeva Nagar, Edapallayam, Redhills, Chennai, before this Court and now confined on Central Prison Puzhal at Chennai set him at liberty.

For Petitioner : Mr.S.Arumugam

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the Wife of the detenu herein, viz., Ramu, son of Rajagopal, aged about 36 years. The detenu has been detained by the second respondent by his order in

BCDFGISSSV No.625/2018, dated 01.08.2018, holding him to be a Video Pirate, as contemplated under Section 2(j) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. The ground case has been registered against the detenu in CCB Crime No.318/2018 on the file of the Inspector of Police, Central Crime Branch, Team-X, Video Piracy Cell, Greater Chennai Police, Egmore, Chennai, for offences under Sections 52(A), 68 (A), 51 r/w. 63(a) & 65 of Copy Right Act, 1957 and 292(2) (a) IPC.

3. We have heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

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 the case of Rajammal vs. State of Tamil Nadu, [(1999) 1 SCC 417].

5. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the 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 01.08.2018. The petitioner made a representation, dated Nil and the same was received on 03.09.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 03.09.2018. The remarks were duly received on 06.09.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.10.2018 and served on the detenu on 04.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 2 days in submitting the remarks by the Detaining Authority, and hence there was a delay of 2 days in submitting the remarks. Thereafter, there was yet another delay of 22 days in considering the representation, of which 10 days

were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 12 days in considering representation.

8. In *Rekha vs. State of Tamil Nadu*, reported in 2011 (5) SCC 244, the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

9. In *Sumaiya vs. The Secretary to Government*, reported in 2007 (2) MWN (Cr.) 145, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

10. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 2 days in submitting the remarks by the Detaining Authority and 12 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.625/2018 on 01.08.2018 passed by the second respondent is set aside. The detenu, namely Ramu son of Rajagopal, aged about 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

सत्यमेव जयते
Deputy Registrar

//True copy//

Sub Assistant Registrar

jas/Jr1

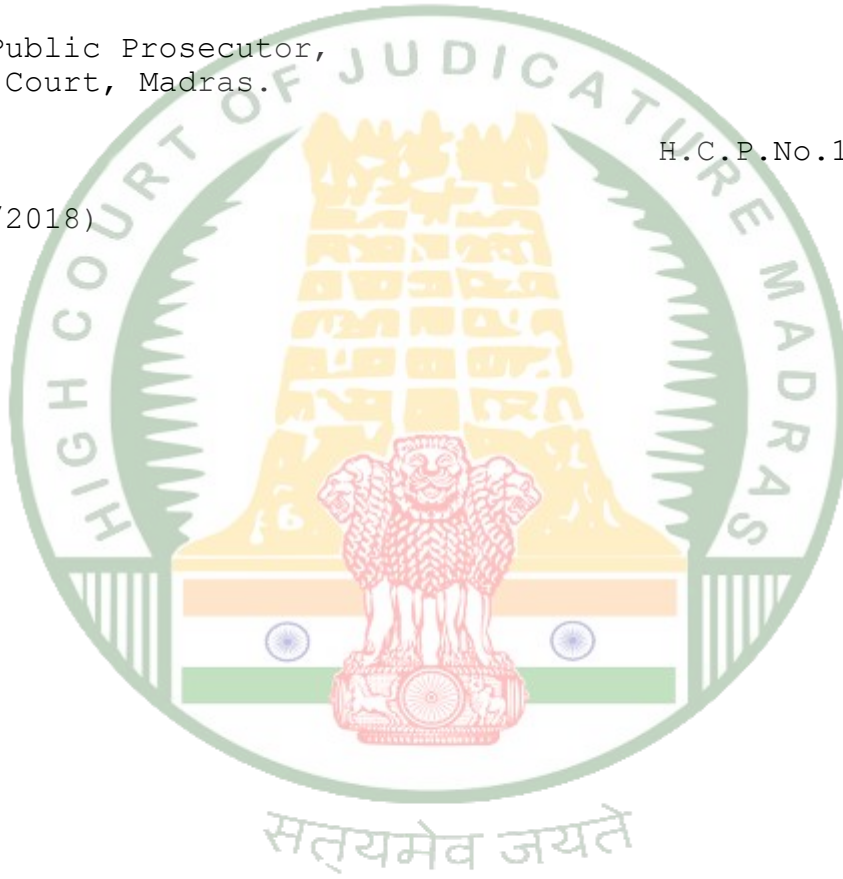
To:

1. The Principal Secretary to Government,
The Sate of TamilNadu,
Home, Prohibition & Excise Department,
Fort.St George, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
O/o.Commissioner of Police,
Vepery, Chennai - 600 007.
3. The Superintendent of Central Prison,
Puzhal, Chennai-66
4. The Joint Secretary to Government
Public (Law & Order)
Fort.St George, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1665 of 2018

GMV (14/12/2018)



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