

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 505 OF 2018

A.Jessi Kavitha

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By its Secretary to Govt.
Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.

2. The District Collector and
District Magistrate
Villupuram District
Villupuram.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in C2/2646/2018 dated 01.02.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detainee, Nambikkai Mary, W/o Arokiyasamy, aged about 42 years, now confined at Special Prison for Women, Vellore, before this Hon'ble Court and set her at liberty.

For Petitioner : Mr. S.Saravanakumar

For Respondents : Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The 2nd respondent, clamped an order of detention on 01.02.2018 on Nambikkai Mary, W/o Arokiyasamy, as the said authority arrived at the subjective satisfaction that the said detainee is a 'Bootlegger' and she has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing her from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the petitioner has come forward with the present habeas corpus petition.

3. Heard Mr.Saravanakumar, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. It is the contention of the learned counsel that there is an undue delay in considering the representation submitted for revoking the order of detention and the said delay has rendered the detention illegal. Learned Addl. Public Prosecutor appearing for the respondents submitted that though there is a delay of 12 days in considering the representation submitted by the detenu, however, the same does not vitiate the order of detention. Though such a contention is advanced, however, no proper and cogent reason or explanation has been adduced by the respondents to explain the delay.

5. The Supreme Court, in Solomon Castro - Vs - State of Kerala, (2000 (9) SCC 561), while dealing with the delay in considering the representation, held as under :-

"4. It has been repeatedly stated by this Court that representation of the detenu is required to be considered and disposed of as expeditiously as possible by the Government. In Rajammal v. State of T.N. [(1999) 1 SCC 417 : 1999 SCC (Cri) 93] this Court again reiterated the constitutional obligation of the Government to consider the representation forwarded by the detenu without delay and observed that even 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. If there is delay in considering the representation the court can consider whether the delay was occasioned due to permissible reasons or unavoidable causes."

6. The above ratio laid down by the Supreme Court clearly reveals that where there is no proper explanation explaining the reason for the delay, the said delay vitiates the order of detention. In the present case, a perusal of the records reveal that no proper explanation has been given by the respondents for the delay. Therefore, the delay in considering the representation submitted by the petitioner, which has not been explained properly vitiates the order of detention. The delay is fatal to the order of detention and this has rendered the detention illegal.

7. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The detainee, Nambikkai Mary, W/o Arokiyasamy, is ordered to be set at liberty forthwith, unless her custody is otherwise required in any other case.

GLN

//True Copy//

Sd/--

Assistant Registrar(CS-II)

Sub Assistant Registrar

To

1. The Secretary to Govt.
Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.
2. The District Collector and
District Magistrate
Villupuram District
Villupuram.
3. The superintendent of special prison for women
vellore.
4. The Joint secretary to Government,
Public (Law and Order) Fort St. George,
Chennai-600009.
5. The public Prosecutor,
High Court,
Madras.

+1 cc to Mr.s.saravana Kumar Advocate SR.NO. 51488

H.C.P. NO. 505 OF 2018

AR(CS-II)
ASK(07/08/2018)

सत्यमेव जयते

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