

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM:

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

H.C.P.No.557 of 2018

Tmt.Chandra
W/o.Pailappa

... Petitioner

-Vs-

1.The State of Tamil Nadu
Represented by its Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai- 600 009.

2.The Commissioner of Police
Greater Chennai
Veppery
Chennai- 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records, pertaining to the impugned order Vide No.BCDFGISSSV No.130/2018 dated 05.03.2018 passed by the second respondent and approved by the first respondent herein and quash the same as illegal and consequently direct the 2nd respondent to produce the detenu Daniel, Son of Pailappa, aged 49 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Kingston Jerold
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the mother of the detenu Daniel S/o.Pailappa, who has been branded as "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in BCDFGISSSV No.130/2018 dated 05.03.2018. 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	R9 Valasaravakkam Police Station, Crime No.1220/2014	379 IPC
2	R11 Royala Nagar Police Station, Crime No.6/2018	379 IPC
3	R11 Royala Nagar Police Station, Crime No.11/2018	379 IPC
4	M7 Manali New Town Police Station, Crime No.15/2018	379 and 420 IPC
5	S10 Pallikaranai Police Station, Crime No.147/2018	379 IPC

The alleged ground case has been registered against the detenu in Crime No.31 of 2018 on the file of R11 Royala Nagar Police Station for offences u/s.341, 397, 336, 427 and 506(ii) 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 05.03.2018. The petitioner submitted representations dated 05.04.2018 and the same was received on 06.04.2018, 09.04.2018 and 11.04.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 06.04.2018 and 09.04.2018. The remarks were duly received on 11.04.2018 and

12.04.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 16.04.2018 and served on the detenu on 18.04.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 6 days, of which 2 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 3 days, of which two were Government holidays, in considering the representations.

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. But, here 9 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 representations of the detenu.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu Daniel S/o.Pailappa, in BCDFGISSSV No.130/2018 dated 05.03.2018, is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary,
Government of India,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai- 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Veppery,
Chennai- 600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai
- 4.The Joint Secretary of Government,
Public (Law & order)
Fort St.George, Chennai-9
- 5.The Public Prosecutor,
High Court, Madras.

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RGN(CO)
GSP(14/09/2018)