

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2018

CORAM

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

H.C.P.No.712 of 2018

M.Devadass
S/o.Munusamy

... Petitioner

vs.

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

2.The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records culminating in the detention of petitioner's son D.Thirumurthy S/o.M.Devadass under Act 14 of 1982 vide detention order dated 26.03.2018 on the file of second respondent herein made in proceeding BCDFGISSSV No.21/2018 and quash the same as illegal and consequently direct the respondent herein to produce the body and person of the said detenu D.Thirumurthy S/o.M.Devadass before this Court and thereafter set him free at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.D.Chandrasekar

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 father of the detenu Thirumurthy S/o.Devadass, who has been branded as "BOOTLEGGERS" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in BCDFGISSSV No.21/2018 dated 26.03.2018. 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	Prohibition Enforcement Wing, Madurantakam Crime No.6/2018	4(1)(a), 4(1-A) TNP Act r/w 6 & 11 of Rectified Spirit Rules 2000 (Transporting)
2	Prohibition Enforcement Wing, Madurantakam Crime No.39/2018	4(1)(aaa), 4(1-A) TNP Act r/w 7 & 11 of Rectified Spirit Rules 2000

The ground case has been registered against the detenu in Crime No.86 of 2018 on the file of Prohibition Enforcement Wing, Madurantakam, for offences u/s.4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act r/w 7 & 11 of Rectified Spirit Rules 2000 (Transporting).

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 26.03.2018. The petitioner submitted a representation dated 07.04.2018 and the same was received on 10.04.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.04.2018. The remarks were duly received on 23.04.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.05.2018.

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

of 20 days, of which 7 days were Government holidays and hence, there was yet another delay of 13 days 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 21 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 Thirumurthy S/o.Devadoss in BCDFGISSSV No.21/2018 dated 26.03.2018 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 to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

2.The District Collector and District Magistrate,
Kancheepuram District,Kancheepuram.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Joint Secretary to Government,
Public (Law and order)
Fort St. George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s. D. Chandra Sekar, Advocate Sr.5736

H.C.P.No.712 of 2018

RGN(CO)
EU(17/09/2018)



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