

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018

CORAM
THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.1990 of 2018

Meeran Moideen
S/o.Hameed Moideen

...Petitioner

vs.

1.State of Tamil Nadu
represented by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the entire records, relating to petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 06.08.2018 on the file of the second respondent herein made in proceedings No.661/BCDFGISSSV/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's brother namely Mohammed Sultan son of Hameed Moideen aged 51 years before this Honourable High Court and set the petitioner's brother at liberty from detention, now petitioner's brother detained at Central prison, Puzhal, Chennai-600 066.

For Petitioner : Mr.C.C.Chellappan

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

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O R D E R

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

Petitioner is the brother of the detenu Mohammed Sultan S/o.Hameed Moideen, who has been branded as "GOONDA" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in No.661/BCDFGISSSV/2018 dated 06.08.2018. Such order is under challenge herein.

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

Sl.	Police Station and Crime No.	Section of law
1.	Central Crime Branch Cr.No.53/2018	379, 420, 511, 34 IPC & 66, 43 of Information & Technology Act

The ground case has been registered against the detenu in Crime No.305 of 2018 on the file of Central Crime Branch for offences u/s.379, 420, 465, 468, 471 IPC and 66 of Information and Technology Act 2000.

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 06.08.2018. The petitioner submitted a representation dated 04.09.2018 and the same was received on 07.09.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.09.2018. The remarks were duly received on 17.09.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 9 days of which 5 days were Government holidays in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 15 days, of which 6 days were Government holidays and hence, there was yet another delay of 9 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. Here, 13 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 Mohammed Sultan S/o.Hameed Moideen in No.661/BCDFGISSSV/2018 dated 06.08.2018 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/rst

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

3.The Public Prosecutor,
High Court, Madras.

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

H.C.P.No.1990 of 2018

rrs 24/01/2019



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