

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

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

H.C.P.No.862 of 2018

G.Yogesh Kumar
S/o.Gopal Rao ... Petitioner
vs.

- 1.The State of Tamil Nadu
represented by
The Secretary,
Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai. 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 pertaining to the order of detention passed by second respondent dated 01.12.2017 in BCDFGISSSV No.751/2017 against the petitioner, now confined at Central Prison II, Puzhal, Chennai and set aside the same and direct the respondent to produce the detenu Yogesh Kumar, aged 29, S/o.Gopal Rao, before this Court and set him at liberty.

For Petitioner : Mr.J.K.Sivaganesh
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, who is the detenu, has been branded as "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in BCDFGISSSV No.751/2017 dated 01.12.2017. Such order is under challenge herein.

2. The detenu came to adverse notice in Crime No.413 of 2017 on the file of J-13 Taramani Police Station for offences u/s.294(b), 324, 341, 506(ii) IPC @ 294(b), 326, 341 and 506(ii)

IPC. The ground case has been registered against the detenu in Crime No.2340 of 2017 on the file of J-13 Taramani Police Station, for offences u/s.341, 294(b), 324, 307 and 506(ii) r/w 384 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 01.12.2017. The petitioner submitted a representation dated 08.03.2018 and the same was received on 27.04.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.04.2018. The remarks were duly received on 03.05.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.05.2018 and sent to the detenu on 14.05.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 5 days, of which 2 days were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 7 days, of which 2 days were Government holidays and hence, there was yet another delay of 5 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 8 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 Yogeshkumar S/o.Gopal Rao in BCDFGISSSV No.751/2017 dated 01.12.2017 is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

gm
To

1.The Secretary,
Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

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3.The Public Prosecutor,
High Court, Madras.

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

H.C.P.No.862 of 2018

SP (27/09/2018)



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