

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM

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

H.C.P.No.868 of 2018

John Basha
S/o.Jalavudeen

... Petitioner

vs.

1.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600007.

2.The Principal Secretary to
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

... 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 in No.219/BCDFGISSSV/2018 on the file of first respondent, quash the detention order dated 12.04.2018 and direct production of the detainee Alima Banu W/o.Mohammed Wazir, aged about 40 years, presently detained at the Special Prison for Women, Puzhal, Chennai, under the Tamil Nadu Act 14 of 1982 as a Immoral Traffic Offender, before this Court and set him at liberty.

For Petitioner : Mr.K.Balasubramaniam

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 detainee Alima Banu W/o.Mohammed Wazir, who has been branded as "Immoral Traffic Offender" under the Tamil Nadu Act 14 of 1982 and detained under orders of first respondent passed in No.219/BCDFGISSSV/2018 dated 12.04.2018. Such order is under challenge herein.

2. The detainee came to adverse notice in the following cases:

Sl.	Police Station and Crime No.	Section of law
1	Anti Vice Squad - I, Crime No.12/2018	3(2) (a), 4(1) & 5(1)a of ITP Act
2	Anti Vice Squad - I, Crime No.27/2018	4(1) & 5(1)a of ITP Act
3	Anti Vice Squad-I, Crime No.33/2018	3(2) (a), 4(1) & 5(1)a of ITP Act

The ground case has been registered against the detainee in Crime No.34 of 2018 on the file of Anti Vice Squad Police Station, for offences u/s.3(2)a, 4(1), 5(1)a, 6(1) & 7(1) of ITP Act.

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 detainee 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 12.04.2018. The petitioner submitted a representation dated 26.04.2018 and the same was received on 30.04.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.05.2018. The remarks were duly received on 07.05.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2018 and sent to the detainee on 17.05.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 4 days, of which 2 days were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 6 days, of which 2 days were Government holidays and hence, there was yet another

delay of 4 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 detainee 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 6 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 detainee, 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 detainee.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the first respondent against the detainee Alima Banu W/o.Mohammed Wazir in No.219/BCDFGISSSV/2018 dated 12.04.2018 is quashed. The detainee is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

gm

To

1.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600007.

2.The Principal Secretary to
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

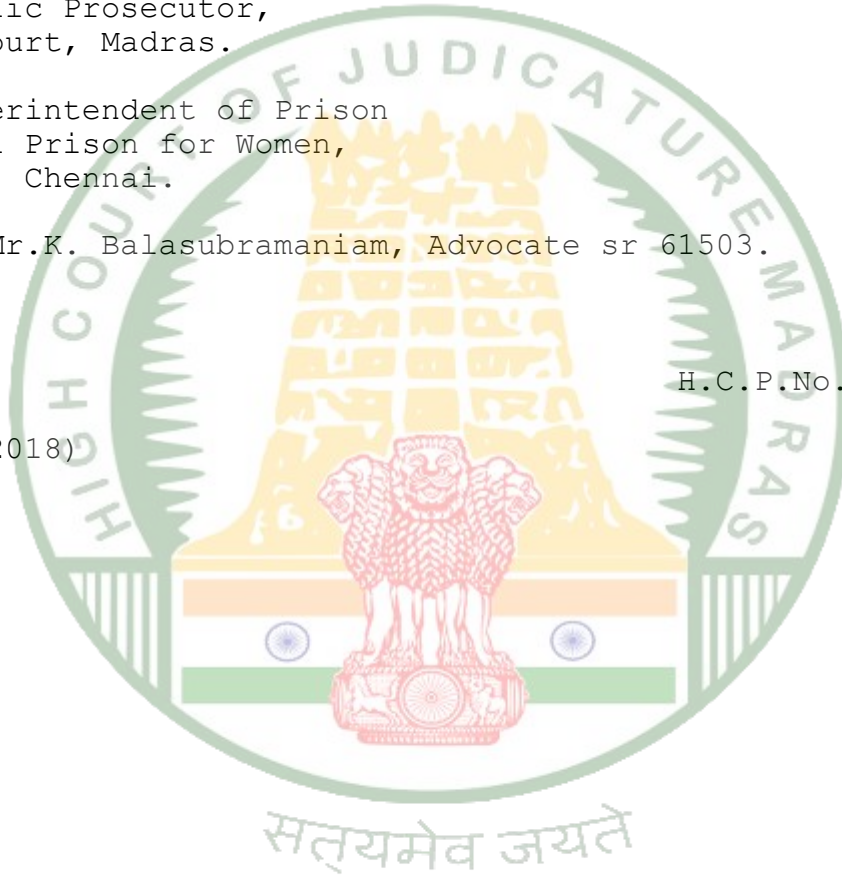
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Prison
Special Prison for Women,
Puzhal, Chennai.

+1 CC to Mr.K. Balasubramaniam, Advocate sr 61503.

H.C.P.No.868 of 2018

SP(27/09/2018)



WEB COPY