

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.871 of 2018

Vijayalakshmi
W/o.Gopinath

... Petitioner

vs.

1.The District Magistrate and
District Collector,
Tiruvallur District,
Tiruvallur.

2.The Secretary to the Government,
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 records of the first respondent herein concerned in No.BCDFGISSSV/09/2018 dated 23.03.2018, setting aside the order of detention passed against her husband Gopi @ Gopinath, S/o.Dharani Krishnan, quashing the same and setting him at liberty now detained in Central Prison II, Puzhal, Chennai.

For Petitioner : Mr.L.Mahendran

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

Petitioner is the wife of the detenu Gopi @ Gopinath S/o.Dharanikrishnan, who has been branded as "Sand Offender" under the Tamil Nadu Act 14 of 1982 and detained under orders of first respondent passed in BCDFGISSSV No.09/2018 dated 23.03.2018. Such order is under challenge herein.

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

Sl.	Police Station and Crime No.	Sections of law
1	B7 Vellavedu Police Station, Crime No.559/2017	36(A) of MMDR Act
2	B7 Vellavedu Police Station, Crime No.560/2017	36(A) of MMDR Act

The ground case has been registered against the detenu in Crime No.151 of 2018 on the file of Vellavedu Police Station, for offences u/s.379, 430, 353, and 307 IPC r/w 36(A) MMDR 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 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 23.03.2018. The petitioner submitted representations dated 10.04.2018 and the same were received on 19.04.2018 and 08.05.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same dates. The remarks were duly received on 04.05.2018 and 17.05.2018. Thereafter, the Government considered the matter and passed the orders rejecting the petitioner's representation on 16.05.2018 and 01.06.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 14 and 9 days, of which 5 and 2 days

were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 11 and 14 days, of which 4 and 4 days were Government holidays and hence, there was yet another delay of 7 and 10 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 19 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 first respondent against the detenu Gopi @ Gopinath S/o.Dharanikrishnan in BCDFGISSSV No.09/2018 dated 23.03.2018 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)

//True Copy//

Sub Assistant Registrar

To

1.The District Magistrate and District Collector,
Tiruvallur District,
Tiruvallur.

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

3.The Public Prosecutor,
High Court, Madras.

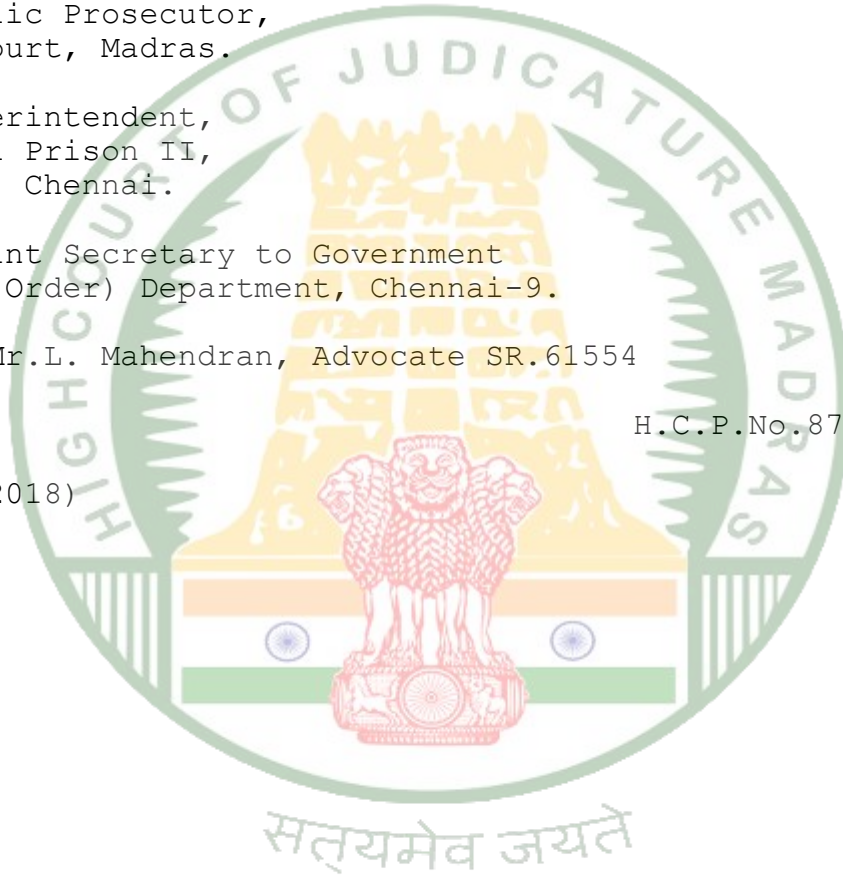
4.The Superintendent,
Central Prison II,
Puzhal, Chennai.

5. The Joint Secretary to Government
(Law & Order) Department, Chennai-9.

+1 cc to Mr.L. Mahendran, Advocate SR.61554

H.C.P.No.871 of 2018

(CS-V)
EU(27/09/2018)



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