

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.977 of 2018

P.Tamilselvan

S/o.Pitchai

... Petitioner

vs.

1.The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.

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

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the first respondent herein and made in No.285/BCDFGISSSV/2018 dated 02.05.2018 and to set aside the same and directing the respondents to produce the detenu, the brother of the petitioner, Subramani, aged 48 years, S/o.Pitchai, now confined at Central Prison, Puzhal, Chennai, before this Court and thereby setting him at liberty.

For Petitioner : Mr.Ganesh Rajan

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 brother of the detenu, who has been branded as "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of first respondent passed in No.285/BCDFGISSSV/2018 dated 02.05.2018. Such order is under challenge herein.

2. The alleged ground case has been registered against the detenu in CCB Crime No.468 of 2017 on the file of Central Crime Branch for offences u/s.465, 468, 471, 417, 120B, 201 IPC and Section 66 r/w 43(i) of Information Technology (Amendment) Act, 2008.

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 02.05.2018. The petitioner submitted a representation dated 12.05.2018 and the same was received on 14.05.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 18.05.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.06.2018 and sent to the detenu on 04.06.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 3 days in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 16 days, of which 6 days were Government holidays, 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 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 first respondent against the detenu Subramani S/o.Pitchai in No.285/BCDFGISSSV/2018 dated 02.05.2018 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 VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.

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

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

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

5.The Public Prosecutor,
High Court, Madras.

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GSP(04/10/2018)



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