IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2068 of 2019

Roy ... Petitioner

Vs.

1. The Government of Tamil Nadu
rep.by its Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St.George,
Chennai 600 009.

2. The District Collector and
District Magistrate
Erode District, Erode. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in Cr.M.P.No.23/Goonda/2019/C1 dated 29.08.2019 on the file of the second respondent herein and set aside the same and direct the respondents herein to produce the body of the petitioner's cousin brother Muraleedharan, aged 35 years, S/o.Krishnan Nair, before this Court, now confined at Central Prison, Coimbatore and set him at liberty.

For Petitioner : M/s.R.Subadra Devi

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

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the cousin brother of the detenu viz.,Muraleedharan, S/o.Krishnan Nair, aged 35 years, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Cr.M.P.No.23/Goonda/2019/C1 dated 29.08.2019.

2. The alleged ground case has been registered against the detenu in Crime No.247 of 2019 on the file of Perundurai Police

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Station for offences u/s.392 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing 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 29.08.2019. The petitioner submitted the representation dated 13.09.2019 and the same was received on 16.09.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.09.2019. The remarks were duly received on 20.09.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 03.10.2019 and served on the detenu on 03.10.2019.

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 12 days, of which 5 were Government holidays and hence, there was 11 days delay in considering the representation.

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

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"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, 11 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.

12. Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Muraleedharan, S/o.Krishnan Nair, in Cr.M.P.No.23/Goonda/2019/C1 dated 29.08.2019, is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

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To

1. The Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St.George,
Chennai 600 009.

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2. The District Collector and
District Magistrate
Erode District, Erode.

3.The Superintendent of Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government,
Public (Law & Order) Department, Fort St.George, Chennai.

AKM/27.02.2020 /4P-6C/

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