

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 08.01.2020

CORAM :

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

H.C.P.No.2142 of 2019

Ramalingam
S/o.Marimuthu

...Petitioner/Brother of Detenu

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison, Tiruchirapalli. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in C.O.C.No.37/2019 dated 29.08.2019 in detaining the detenu under Section 2(b) of the Tamil Nadu Act 14 of 1982 as a Boot-Legger and quash the same and direct the respondents to produce the detenu, namely, Murugan, S/o.Marimuthu, Male, aged about 35 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty. सत्यमेव जयते

For Petitioner : Mr.K.M.Karunakaran
For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

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

The petitioner herein is the brother of the detenu, namely, Murugan, S/o.Marimuthu, aged about 35 years, has filed this petition, challenging the order of detention passed by the second respondent in C.O.C.No.37/2019 dated 29.08.2019, branding

him as a "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. The alleged ground case has been registered against the detenu in Crime No.211 of 2019 on the file of Kuthalam Police Station for offences under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937. Aggrieved by the order of detention, the present Habeas Corpus Petition has been filed.

3. Heard learned counsel appearing for the 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 appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. 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 appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in RAJAMMAL vs. STATE OF TAMIL NADU reported in (1999) 1 SCC 417.

5. Learned Additional Public Prosecutor appearing for respondents 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 23.09.2019 and the same was received on 30.09.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.10.2019. The remarks were duly received on 31.10.2019, after a delay of 17 days. He adds that though the file was dealt with by the Deputy Secretary on 31.10.2019, the said file was dealt with by the Minister concerned only on 27.11.2019, with a further delay of 18 days. Thereafter, the Government considered the matter and passed the order rejecting

the petitioner's representations on 29.11.2019 and served on the detenu on 29.11.2019.

7. It is the contention of the petitioner that there was an inordinate delay of 17 days, of which 12 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 18 days, of which 8 were Government holidays and hence, there was 35 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 "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 Hon'ble 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, 35 days delay has not been properly explained at all.

10. Further, in a recent decision in UMMU SABEENA vs. STATE OF KERALA reported in 2011 STPL (Web) 999 SC, in which, the Hon'ble Apex 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 representation of the detenu.

12. Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu, namely, Murugan, S/o.Marimuthu, Male, aged about 35 years in C.O.C.No.37/2019 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.S.VI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department, Fort St.George, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

AKM/10.02.2020 /4P-6C/

सत्यमेव जयते

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