

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

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

H.C.P.No.2161 of 2019

Sandhya

... Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai 600 009.

2. The Commissioner of Police / Detaining Authority
City Police Officer,
Huzur Road,
Coimbatore City,
Coimbatore - 18.

... 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 relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 18.09.2019 on the file of the second respondent herein made in proceedings Memo C.No.72/G/IS/2019 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely F.Jose @ Luvis @ Joshwa, S/o.Francis aged 30 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : M/s.W.Camyles Gandhi
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 wife of the detenu viz., F. Jose @ Luvis @ Joshua, son of Francis, aged 30 years, who has been branded as a 'Sexual Offender' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C.No.72/G/IS/2019 dated 18.09.2019.

2. The alleged ground case has been registered against the detenu in Crime No.455 of 2019 on the file of D1 Ramanathapuram Police Station, Coimbatore for offences u/s.366, 376 DA IPC and 5 (1) r/w 6 of Protection of Children from Sexual Offences Act 2012 and Section 9 of Prohibition of Child Marriage Act 2006 r/w 109 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 18.09.2019. The petitioner submitted the representation dated 03.10.2019 and the same was received on 09.10.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.10.2019. The remarks were duly received on

18.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 30.10.2019 and served on the detenu on 31.10.2019.

7. It is the contention of the petitioner that there was an inordinate delay of 9 days, of which 3 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 11 days, of which 5 were Government holidays and hence, there was 12 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 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, 12 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., F.Jose @ Luvis @ Joshwa, son of Francis, in C.No.72/G/IS/2019 dated 18.09.2019, 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(CS-VIII)

// True Copy//

Sub Assistant Registrar

dpq

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai 600 009.
2. The Commissioner of Police / Detaining Authority
City Police Officer,
Huzur Road, Coimbatore City,
Coimbatore - 18.
- 3.The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.2161 of 2019

EV(CO)
CSR: 05.03.2020

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