

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

CORAM

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

H.C.P.No.2179 of 2019

Rekha

... Petitioner

Vs

1. The District Collector and District Magistrate
Cuddalore District,
Cuddalore.
 2. The Secretary to the Government
of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.
- ... 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 C3/D.O/66/2019 on the file of the first respondent, quash the detention order dated 10.09.2019 and direct the production of the detenu Padmanaban, S/o.Perumal presently detained at the Central Prison, Cuddalore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : M/s.A.M.Rahamath Ali

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

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O R D E R

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

Petitioner is the wife of the detenu viz., Padmanaban, S/o.Perumal, aged 41 years, who has been branded as a 'Bootlegger' under the Tamil Nadu Act 14 of 1982 and detained under order of first respondent passed in C3/D.O./66/2019 dated 10.09.2019.

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

Sl.No	Police Station & Crime No.	Section of Law
1.	Kadampuliyur Police Station Cr.No.77/2019 dated 04.03.2018	Sec.4(1) (a) & 4(1-A) Tamil Nadu Prohibition Act 1937
2.	Kadampuliyur Police Station Cr.No.324/2018 dated 12.08.2018	Sec.4(1) (aaa) & 4(1-A) @ 4(1) (aaa) Tamil Nadu Prohibition Act 1937

3.	Kadampuliyur Police Station Cr.No.481/2018 dated 02.12.2018	Sec.4(1) (aa) & 4(1-A) @ 4(1) (aa) Tamil Nadu Prohibition Act 1937
4.	Kadampuliyur Police Station Cr.No.43/2019 dated 01.02.2019	Sec.4(1) (aaa) & 4(1-A) @ 4(1) (aaa) Tamil Nadu Prohibition Act 1937

The alleged ground case has been registered against the detenu in Crime No.278 of 2019 on the file of Kadampuliyur Police Station for offences u/s.4(1) (aaa) & 4(1-A) r/w 14A (Transport) of Tamil Nadu Prohibition Act, 1937. 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 10.09.2019. The petitioner submitted the representation dated 23.09.2019 and the same was received on 24.09.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.09.2019. The remarks were duly received on 24.10.2019. 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 30.10.2019.

7. It is the contention of the petitioner that there was an inordinate delay of 30 days, of which 11 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 5 days, of which 3 were Government holidays and hence, there was 21 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, 21 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 first respondent against the detenu viz., Padmanaban, S/o.Perumal, in C3/D.O./66/2019 dated 10.09.2019, 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(CO)

//True copy//

Sub Assistant Registrar

dpq

To

1. The District Collector and District Magistrate
Cuddalore District,
Cuddalore.
2. The Secretary to the Government
of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prisons,
Cuddalore.
5. The Joint Secretary the Government,
Public (Law & Order)
Fort St George,
Chennai-9

H.C.P.No.2179 of 2019

NRL(CO)
GMY(28/02/2020)