

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM

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

H.C.P.No.2218 of 2019

Sathya Priya

... Petitioner/Wife of detenue

Vs

1.The Commissioner of Police,
The Office of the Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.

2.The Government of Tamilnadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records of the first respondent culminating with the order of detention bearing No.604/BCDFGISSSV/2019 dated 18.09.2019 passed by the first respondent herein detaining the petitioner's husband Thiru Suresh Babu, Son of Subarayalu under Section Act XIV of 1982 and quash the same and direct the respondents to produce the body of the person of the detenu, Thiru Suresh Babu son of Subarayalu, male, aged about 43 years before this Court, now detained in the Central Prison, Puzhal, Chennai and thereby set him at liberty.

For Petitioner : Mr.S.Mohanraj

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. Suresh Babu, S/o. Subarayalu, aged 43 years, who has been branded as an 'Immoral Traffic Offender' under the Tamil Nadu Act 14 of 1982 and detained under order of first respondent passed in No.604/BCDFGISSSV/2019 dated 18.09.2019.

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

Police Station and Crime No.	Section of Law
Anti Vice Squad 1 Crime No.91/2018	3(2)(a), 4(1) & 5(1)(a) of ITP Act

The alleged ground case has been registered against the detenu in Crime No.40 of 2019 on the file of the Anti Vice Squad-II for the offences u/s. 3(2)a, 4(1), 5(1)a, 6(1) & 7(1) of ITP Act. 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. 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's representation 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 14.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.10.2019 and the same sent to the detenu on 30.10.2019.

7. It is the contention of the petitioner that there was an inordinate delay of 4 days in submitting the remarks by the Detaining Authority and there was yet another delay of 14 days, of which 6 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 representation of the detenu.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Suresh Babu, S/o.Subarayalu, in No.604/BCDFGISSSV/2019 dated 18.09.2019, is set aside. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other cases.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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2.The Government of Tamilnadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

3.The Superintendent, Central Prison,
Puzhal, Chennai-66.

4. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2218 of 2019

VBA (CO)
GN(09/03/2020)