IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2020
CORAM
THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
H.C.P.No.2224 of 2019

Rajesh : Petitioner/Friend of the detenue

Vs

1. The Government of Tamil Nadu
Rep. by its Additional Chief Secretary
Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

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

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records relating to the proceedings of the second respondent dated 17.09.2019 vide C.O.C.No.50 of 2019 against detenue Sarathkumar, son of Karunanithi, aged about 29 years and quash the same consequently direct the respondents herein to produce the detenue who has been now detained under Act 14 of 1982 in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.M.K.Subramanian
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 friend of the detenu viz., Sarathkumar, S/o.Karunanithi, aged 29 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 C.O.C.No.50/2019 dated 17.09.2019.

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2. The alleged ground case has been registered against the detenu in Crime No.166 of 2019 on the file of Vedaraniyam Police Station for offences u/s.147, 148, 120(b), 353, 153(A) 504, 505 (i) (b) and 307 IPC 3(1) of Tamil Nadu property (Prevention of Damage & Loss) Act 1992 (Amended 1994). 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 17.09.2019. The petitioner submitted the representation dated 30.09.2019 and the same was received on 03.10.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 03.10.2019. The remarks were duly received on 31.10.2019. 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 02.12.2019.

7. It is the contention of the petitioner that there was an inordinate delay of 28 days, of which 11 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 28 days, of which 7 were Government holidays and hence, there was 38 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

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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, 38 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., Sarathkumar, S/o.Karunanithi, in C.O.C.No.50/2019 dated 17.09.2019, 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-VI)

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Sub Assistant Registrar

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To

1. The Additional Chief Secretary
   Prohibition and Excise Department,
   Fort St.George,
   Chennai 600 009.

2. The Joint Secretary to Government,
   Public (Law and Order),
   Fort St.George,
   Chennai 600 009.

3. The District Collector and District Magistrate,
   Office of the District Collector and District Magistrate,
   Nagapattinam District,
   Nagapattinam.

4. The Superintendent of Central Prison,
   Tiruchirappalli.

5. The Public Prosecutor,
   High Court, Madras.

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CA(CO)
CSR: 04.03.2020

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