

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

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

H.C.P.NO.2273 OF 2019

Parthiban

... Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The District Magistrate and District Collector,
Tiruppur, Tiruppur District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to calling for the entire records relating to the petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 01.10.2019 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.12/Sand Offender/2019 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Tamilselvan, S/o.Subramanian, aged 30 years before this Court and set the petitioner's brother at liberty from detention, now the petitioner's brother detained at Central Prison, Coimbatore.

For Petitioner : Mr.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 brother of the detenu viz. Tamilselvan, S/o.Subramanian, aged 30 years, who has been branded as a 'Sand Offender' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Cr.M.P. No.12/Sand Offender/2019 dated 01.10.2019.

2.The alleged ground case has been registered against the detenu in Crime No.271 of 2019 on the file of Moolanur Police Station for offences u/s. 379 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. 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 01.10.2019. The petitioner submitted the representation on 15.10.2019 and the same was received on 17.10.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.10.2019. The remarks were duly received on 08.11.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.11.2019 and sent on the detenu on 02.12.2019.

7.It is the contention of the petitioner that there was an inordinate delay of 21 days in submitting the remarks by the Detaining Authority and there was yet another delay of 18 days, of which 12 were Government holidays and hence, there was 27 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, 27 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., Tamilselvan, S/o.Subramanian, in Cr.M.P. No.12/Sand Offender/2019 dated 01.10.2019, is set aside. The above named detainee 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

vga

To

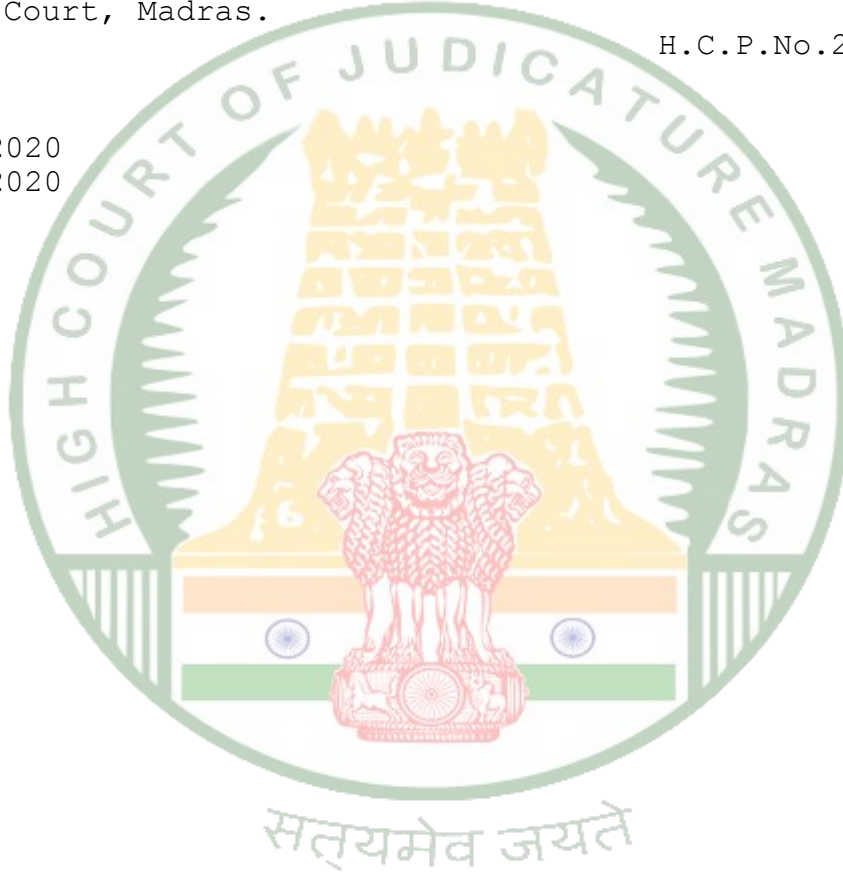
1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

WEB COPY

2. The District Magistrate and District Collector,
Tiruppur, Tiruppur District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2273 of 2019

BR(CO)
CS/20/03/2020
CS/22/05/2020



WEB COPY