

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

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

H.C.P.No.2271 of 2019

P.Rekha
W/o.S.Prakash

... Petitioner/Sister of the detenu

Vs

1.State represented by
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 7.

... 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 No.BCDFGISSSV No.609/2019 dated 20.09.2019 passed by second respondent, set aside the same and direct the respondents to produce the detenu Muthu @ Muthukumar S/o.Elumalai, aged 29 years, who is now confined at Central Prison, Puzhal, Chennai-66, before this Court and set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondents: Mr.R.Prathap Kumar

Additional Public Prosecutor

WEB COPY
O R D E R

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

Petitioner is the sister of the detenu viz., Muthu @ Muthukumar S/o.Elumalai, 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 BCDFGISSSV No.609/2019 dated 20.09.2019.

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

<https://hcservices.ecourts.gov.in/hcservices/>

Sl. No.	Police Station and Crime No.	Section of Law
1.	J-10 Chemmanchery Police Station, Crime No.200/2019	394 IPC
2.	S-12 Chitlapakkam Police Station, Crime No.567/2019	341, 294(b), 307 and 506 (ii) IPC

The alleged ground case has been registered against the detenu in Crime No.569 of 2019 on the file of S-12 Chitlapakkam Police Station for offences u/s.341, 294(b), 336, 427, 392 r/w 397 and 506(ii) 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 20.09.2019. The petitioner submitted the representation dated 14.10.2019 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 21.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation 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 3 days in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 5 days, of which 2 were Government holidays and hence, there was 6 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, 6 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.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Muthu @ Muthukumar S/o.Elumalai, aged 29 years, in No.BCDEFGISSV No.609/2019 dated 20.09.2019, 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)

//True Copy//

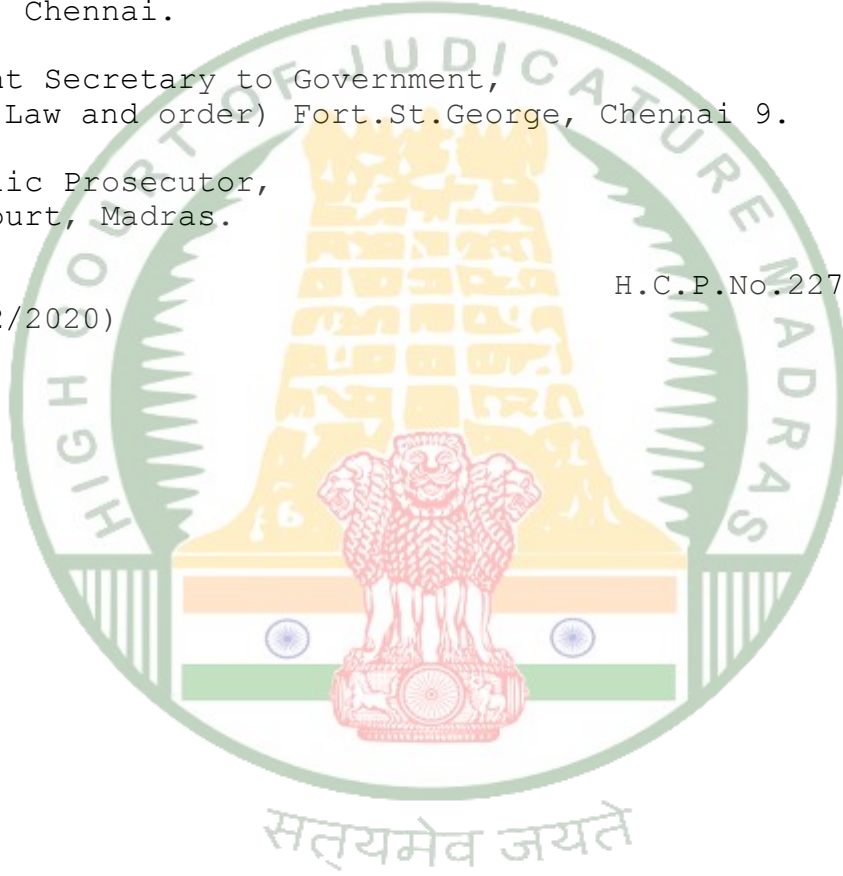
Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 7.
- 3.The Superintendent of Central Prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

A.SK(26/02/2020)

H.C.P.No.2271 of 2019



WEB COPY