

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

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

H.C.P.No.2512 of 2019

Kalaiselvi

W/o.Manickaraj @ Raj ...Petitioner/Sister of the Detenu

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600009.

2.Commissioner of Police,
Greater Chennai. ... 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 connection with the order of detention passed by second respondent dated 03.10.2019 in Memo No.643/BCDFGISSSV/2019 against the petitioner's brother Hariharan @ Hari, Male, aged 29 years, S/o.Gunasekaran, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

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For Petitioner : Mr.S.Senthilvel

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 sister of the detenu viz. Hariharan @ Hari, aged 29, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Memo No.643/BCDFGISSSV/2019 dated 03.10.2019.

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

Sl.No.	Police Station and Crime No.	Section of law
1.	T-1 Ambattur Police Station, Crime No.866/2019	457 and 380 IPC
2.	T-2 Ambattur Estate P.S. Crime No.484/2019	457 and 380 IPC
3.	T-1 Ambattur Police Station, Crime No.1041/2019	457 and 380 IPC

The alleged ground case has been registered against the detenu in Crime No.680 of 2019 on the file of T-3 Korattur Police Station, for offences u/s.341, 294(b), 336, 427, 392, 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 03.10.2019. The petitioner submitted the representation dated 11.11.2019 and the same was received on 15.11.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.11.2019. The remarks were duly received on 20.11.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.11.2019.

7. It is the contention of the petitioner that there was an inordinate delay of 4 days, of which 2 were Government holidays, in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 7 days, of which 2 were Government holidays and hence, there was 7 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, 7 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., Hariharan @ Hari, aged 29, in Memo No.643/BCDFGISSSV/2019 dated 03.10.2019, 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 case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent,
Central Prison,
Puzhal,
Chennai - 600066.
- 4.The Joint Secretary
Govt Public(Law & Order),
Fort St George,
Chennai - 9
- 5.The Public Prosecutor,
High Court,
Madras.

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H.C.P.No.2512 of 2019

RV(CO)
RN(20/05/2020)