

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1207 of 2015

Jaya

W/o.R.Chandra Sekar

... Petitioner

vs.

1.State of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and
Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and
District Magistrate,
O/o.Collectorate Office,
Coimbatore District.

3.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's husband detention under Section 3(1) r/w. 3(2)(b) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980), vide detention order dated 29.04.2015 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.21/BM/2015 (E1), quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely R.Chandra Sekar, S/o.Ramu Devar, aged 40 years, before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.D.Gopikrishnan

For Respondents: Mr.M.Maharaja,
Additional Public Prosecutor [R1 & R2]
Dr.D.Simon,
Central Government Standing Counsel [R3]

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

Petitioner is the wife of the detenu, R.Chandra Sekar, S/o.Ramu Devar, who has been detained under order of the second respondent passed in Memo Cr.M.P.No.21/BM/2015 (E1) dated 29.04.2015.

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

Sl.No	Police Station and Crime No.	Sections of Law
1.	Pollachi Civil Supplies Criminal Investigation Department, Crime No.189 of 2012	6(4) TNSC, (RDCS), Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955
2.	Pollachi Civil Supplies Criminal Investigation Department, Crime No.313 of 2014	6(4) TNSC, (RDCS), Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955
3.	Pollachi Civil Supplies Criminal Investigation Department, Crime No.315 of 2014	6(4) TNSC, (RDCS), Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955

The alleged ground case has been registered against the detenu on 17.04.2015 by the Pollachi Civil Supplies Criminal Investigation Department, in Crime No.109 of 2015 for offence under Section 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)a(ii) of EC Act, 1955. Aggrieved by the order of detention, the present writ petition has been filed.

3. Amidst several grounds, learned counsel for petitioner contended that the petitioner's representation dated 08.05.2015 made to respondents had been disposed of after much delay. The representation had been made on 08.05.2015 and the same was disposed of only on 08.06.2015. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in Rajammal vs. State of Tamil Nadu [(1999) 1 SCC 417].

4. Resisting the contention of learned counsel for petitioner, learned Additional Public Prosecutor submitted that the representation was received only on 11.05.2015, remarks were called

for on 13.05.2015 and received on 01.06.2015. Thereafter, the file was sent to the concerned authorities and finally, the petitioner's representation was rejected on 08.06.2015. Learned Additional Public Prosecutor further submitted that there had been eight intervening holidays. Therefore, according to learned Additional Public Prosecutor, there is no inordinate delay in considering the representation of the detenu and therefore, he prayed for dismissal of the petition.

5. This Court has considered the submissions and perused the materials available on record.

6. 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."

7. 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. But, here the delay has not been properly explained at all.

8. 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.

9. We are of the view that the delay in consideration of the petitioner's representation stands unexplained. The failure to consider the representation of the petitioner with promptitude is in violation of his fundamental rights enshrined under Articles 21 and 22(5) of the Constitution of India. On this ground alone, the impugned order of detention is liable to be set aside.

Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed against the detenu viz., R.Chandra Sekar, S/o.Ramu Devar, by the second respondent in Cr.M.P.No.21/BM/2015 (E1) dated 29.04.2015, is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o.Collectorate Office,
Coimbatore District.
- 3.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent of Central Prison,
Coimbatore.(In duplicate for communication to detenu)

H.C.P.No.1207 of 2015

TS(CO)
EU 16.09.15