

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1818/2015

Palaniappan

.. Petitioner

vs.

1.The Secretary to Government
State of Tamil Nadu,
Department of Cooperation, Food
and Consumer Protection
Fort St George, Chennai 600009.

2.The District Magistrate & District Collector
Namakkal District, Namakkal.

3.The Addl. Secretary to Government
Government of India, Ministry of
Food, Consumer Affairs & Public
Distribution, 270, Krishi Bhavan
New Delhi 110001.

..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to produce the body of the son of the petitioner by name Ramesh, son of Palaniappan, aged 37 years/detenu before this Court and set him at liberty forthwith by calling for the records pertaining to the detention order made in CMP No.02/PBMMSEC Act/2015 [F3] dated 15.07.2015 on the file of the 2nd respondent, quash the same.

For petitioner : Mr.N.Manokaran
For RR1 & 2 : Mr.R.Maharaja,APP
For R3 : Mr.J.Nandagopal

O R D E R
(Order of the Court was made by R.SUDHAKAR, J.)

The Petitioner, who is the father of the detenu, viz., Ramesh, S/o.Palaniappan, aged 37 years, has filed this Petition challenging the order of detention passed by the 2nd respondent in CMP No.02/PBMMSEC Act/2015 [F3] dated 15.07.2015, branding his son as a "BLACK MARKETER" under Section 3(1) R/W 3[2][a] of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Central Act 7 of 1980].

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu, dated 25.07.2015. According to the learned counsel for the petitioner, the representation, dated 25.07.2015, has been received by the Government on 29.07.2015 and remarks have been called for from the detaining authority on 04.08.2015 ; but, the remarks have been received by the Government only on 17.08.2015, after a delay of thirteen days. He adds that the file was submitted to the Under Secretary after a delay of three days, i.e., on 20.08.2015 and further, the Minister has dealt with the said file of the detenu on 27.08.2015, with a further delay of six days. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were eight intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of seventeen days, which remains unexplained. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in *Rajammal vs. State of Tamil Nadu*, reported in (1999) 1 SCC 417.

3. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the Government received the representation on 29.07.2015 and that was forwarded to the Detaining Authority, calling for remarks on 04.08.2015 and remarks were received by the Government on 17.08.2015 and ultimately, the representation was considered and rejected on 27.08.2015 and the result of the consideration was communicated to the detenu on 31.08.2015. Therefore, according to the 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.

4.We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

5.As per the Proforma submitted by the learned Additional Public Prosecutor, on the representation of the detenu, dated 25.07.2015, which was received by the Government on 29.07.2015, remarks have been called for from the detaining authority on 04.08.2015. But, remarks have been received by the Government on 17.08.2015 and the case of the detenu was dealt with by the Minister only on 27.08.2015, i.e., after a delay of ten days and thereafter, the representation has been considered by the authorities concerned and rejected on 27.08.2015. From the above, it is clear that in between 29.07.2015 and 04.08.2015, [i.e., the intermittent days between the representation received and the remarks called for] there is a delay of 6 days ; in between 04.08.2015 and 17.08.2015, [i.e, the intermittent days between the remarks called for and the remarks received], there is a further delay of 13 days and in between 21.08.2015 and 27.08.2015 [i.e., the intermittent days between the file being dealt with by the Law Secretary and the Minister concerned], there is a delay of 6 days. Even if we give concession to the eight intervening holidays, namely 01.02.2015, 02.08.2015, 08.08.2015, 09.08.2015, 15.08.2015, 16.08.2015, 22.08.2015 and 23.08.2015, still there is a delay of seventeen days, which remain unexplained.

6.It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the delay of thirteen days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

7.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."

8.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 seventeen days delay has not been properly explained at all.

9.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.

10.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.

11.Accordingly, the habeas corpus petition is allowed and the detention order dated 15.07.2015, passed by the 2nd respondent 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(J)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

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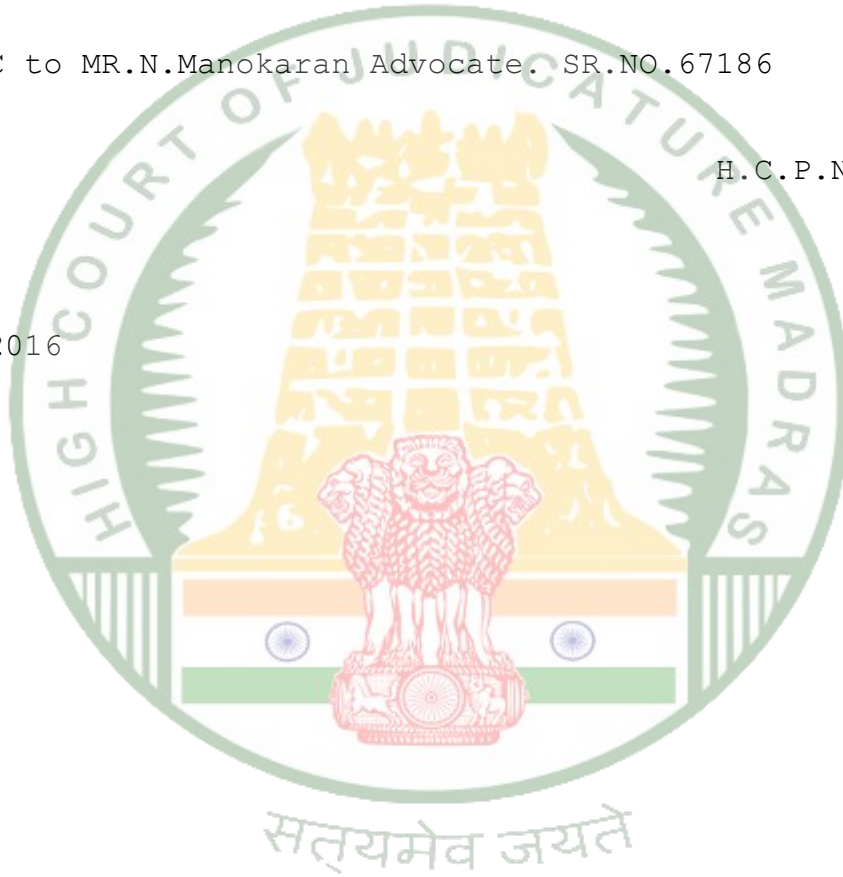
4.The Public Prosecutor, High Court, Madras.

5.The Superintendent
Central Prison, Salem.

+1 CC to MR.N.Manokaran Advocate. SR.NO.67186

H.C.P.No.1818/2015

CO-TM
JD 11/01/2016



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