

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1849 of 2015

Venkatesh

..Petitioner

Vs.

1.The Secretary to the Government
Cooperation, Food & consumer
Protection Department, 2nd Floor,
Namakkal Kavingnar Maligai,
Secretariat, Chennai-9.

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

3.The Secretary to Government
Ministry of Consumer Affairs
Food & Public Distribution [Dept of
Consumer Affairs] Room No.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 calling for the records in connection with the order of detention passed by the 2nd respondent dated 20.07.2015 in No.C2/13812/2015 against the petitioner's brother Ayyavu @ Selvam, son of Muniyappa Gounder, aged about 42 years, who is confined at Central Prison, Cuddalore, and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban

For RR1 & 2 : Mr.M.Maharaja, APP

For R3 : Mr.N. Sivabharathi

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner herein is the brother of the detenu and he has filed this petition challenging the order of detention passed by the 2nd respondent in C3/DO/34/2015 dated 20.07.2015, branding his brother Ayyavu @ Selvam, son of Muniyappa Gounder, aged 42 years, as a "BLACK MARKETEER" under Section 3[2][a] read with 3[1] 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 30.07.2015. According to the learned counsel for the petitioner, the representation dated 30.07.2015 has been received by the Government on 31.07.2015 but the remarks have been called for from the detaining authority only on 05.08.2015 after a delay of 5 days and the remarks have been received by the Government only on 11.08.2015, with a further delay of 6 days. He adds that the file was dealt with by the Minister concerned on 19.08.2015 and the rejection letter was prepared on 19.08.2015 and communicated to the detenu on 21.08.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 4 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 7 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 31.07.2015 and that was forwarded to the Detaining Authority, calling for remarks on 05.08.2015 and remarks were received by the Government on 11.08.2015 and ultimately, the representation was considered and rejected on 19.08.2015 and the result of the consideration was communicated to the detenu on 21.08.2015. 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 30.07.2015, which was received by the Government on 31.07.2015, the remarks have been called for from the detaining authority only on 05.08.2015, after a delay of 5 days. But, remarks have been received by the Government only on 11.08.2015, i.e., with a further delay of 6 days and the case of the detenu was dealt with by the Minister concerned on 19.08.2015 and the same was

rejected on the same day, i.e., on 19.08.2015. From the above, it is clear that in between 31.07.2015 and 05.08.2015 [i.e., the intermittent days between the representation received and the remarks called for], there is a delay of 5 days and in between 05.08.2015 and 11.08.2015, [i.e., the intermittent days between the remarks called for and the remarks received] there is a delay of 6 days. Even if we give concession to the 4 intervening holidays, namely 01.08.2015, 02.08.2015, 08.08.2015 and 09.08.2015, still there is a delay of 7 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 7 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 7 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 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(CS II)

//True Copy//

Sub Assistant Registrar

AP
To

1. The Secretary to the Government
Cooperation, Food & consumer
Protection Department, 2nd Floor,
Namakkal Kavingnar Maligai,
Secretariat, Chennai-9.
 2. The District Collector & District Magistrate
Villupuram District, Villupuram.
 3. The Secretary to Government
Ministry of Consumer Affairs
Food & Public Distribution [Dept of
Consumer Affairs] Room No.270
Krishi Bhavan, New Delhi 110001.
 4. The Public Prosecutor, High Court, Madras.
 5. The Joint Secretary to Government, Public (L&O)
Fort St. George, Chennai-9.
 6. The Superintendent Central Prison, Cuddalore.
- + 1 cc to Mr.N. Sivabharathi, Advocate Sr.69498

H.C.P.No.1849 of 2015

SVI (CO)
EU 19.1.16