

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.1942/2015

Shaul Hameed

..Petitioner

vs.

1.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.

2.The Secretary to Government
Cooperation, Food & Consumer Protection
Department, 2nd Floor, Namakkal Kavignar
Maligai, Secretariat, Chennai.

3.Addl Secretary to Government of India
Department of Consumer Affair
Room No.270, Krishi Bhavan, New Delhi.

4.The Secretary to Government
Food & Consumer Protection Department
Government of India, 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 1st respondent dated 29.07.2015 in D.O.No.63/2015 against the petitioner's son the detenu herein, now confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu Thiru Syed Ali, son of Shahul Hameed, aged about 35 years before this Court and set him at liberty.

For petitioner	: Mr.R.C.Paul Kanagaraj
For RR1 & 2	: Mr.R.Maharaja,APP
For RR 3 & 4	: Mr.G.Venkatesan, CGC

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., Syed Ali, son of Shahul Hameed, aged about 35 years, has filed this Petition challenging the order of detention passed by the 1st respondent in D.O.No.63/2015 dated 29.07.2015, 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 10.08.2015. According to the learned counsel for the petitioner, the representation, dated 10.08.2015, has been received by the Government on 11.08.2015 and remarks have been called for from the detaining authority on 17.08.2015 after a delay of six days ; but, the remarks have been received by the Government only on 27.08.2015, after a further delay of ten days. He adds that the file was submitted to the Under Secretary after a delay of eleven days, i.e., on 07.09.2015 and further, the Minister has dealt with the said file of the detenu on 15.09.2015 after a delay of six days from the date on which the Law Secretary has dealt with the same, i.e., 09.09.2015 and subsequently, rejected on 16.09.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were ten intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of twenty three 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 11.08.2015 and that was forwarded to the Detaining Authority, calling for remarks on 17.08.2015 and remarks were received by the Government on 27.08.2015 and ultimately, the representation was considered and rejected on 16.09.2015 and the result of the consideration was communicated to the detenu on 16.09.2015. 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 10.08.2015, which was received by the Government on 11.08.2015, remarks have been called for from the detaining authority only on 17.08.2015. But, remarks have been received by the Government on 27.08.2015, i.e., after a delay of ten days and the case of the detenu was dealt with by the Minister only on 15.09.2015 and rejected on the next day. From the above, it is clear that at each and every stage, there is an inordinate delay, which remained unexplained, viz., in between 11.08.2015 and 17.08.2015, [i.e., the intermittent days between the representation received and the remarks called for] there is a delay of 6 days; in between 17.08.2015 and 27.08.2015, [i.e., the intermittent days between the remarks called for and the remarks received], there is a further delay of 10 days; in between 27.08.2015 and 07.09.2015 [i.e., the intermittent days between the remarks received and the file dealt with by the Under Secretary], there is a delay of 11 days and in between 09.09.2015 and 15.09.2015 [i.e., the intermittent days between the file dealt by the Law Secretary and the Minister concerned], there is a delay of 6 days. Even if we give concession to the ten intervening holidays including Government holidays, namely 15.08.2015, 16.08.2015, 22.08.2015, 23.08.2015, 29.08.2015, 30.08.2015, 05.09.2015, 06.09.2015, 12.09.2015 and 13.09.2015, still there is a delay of twenty three 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 twenty three 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 29.07.2015, passed by the 1st 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 (CO)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

1.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.

2.The Secretary to Government
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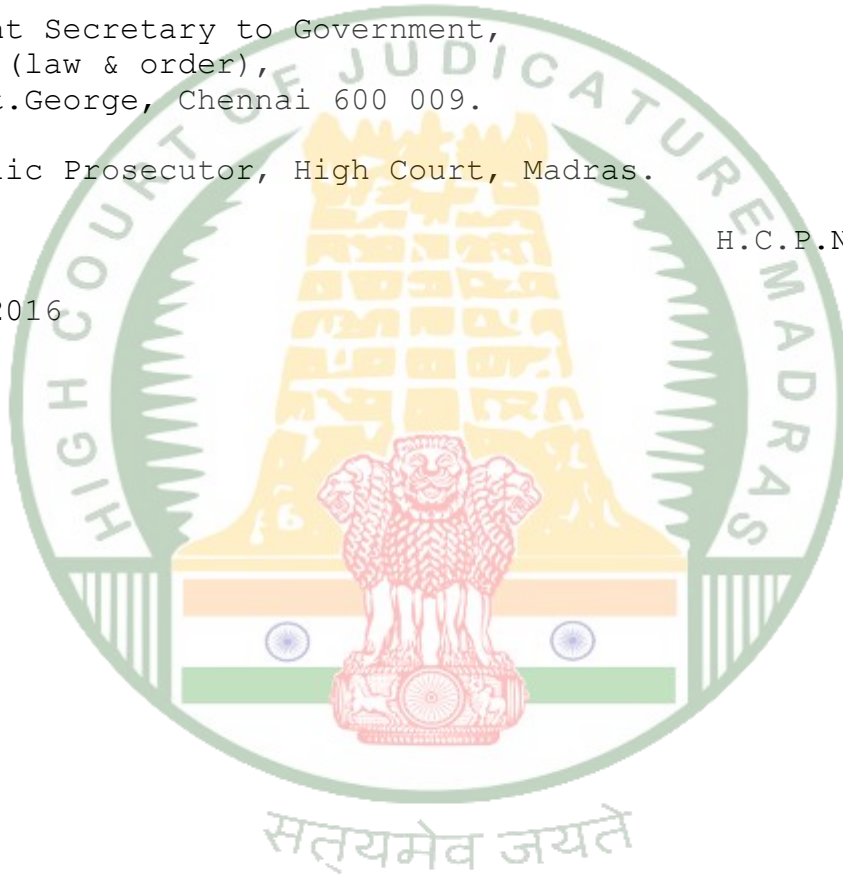
5.The Superintendent
Central Prison, Vellore.

6.The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.

7.The Public Prosecutor, High Court, Madras.

H.C.P.No.1942/2015

CO-RV
JD 12/01/2016



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