

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.2646/2015

Sithamma

...Petitioner/matter of the detenu

vs.

1.The State of Tamil Nadu
rep by Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

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

...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 detenu by name Madheva, aged 28 years, son of Chikkumadha presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 22.07.2015 made in Cr.MP.No.24/Black Marketer/2015/[C1] on the file of the 2nd respondent and quash the same.

For petitioner : Mr.C.Munusamy

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

O R D E R

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

The Petitioner, who is the mother of the detenu, viz., Madheva, has filed this Petition challenging the order of detention passed by the 2nd respondent in Cr.MP.No.24/Black

Marketer/2015/[C1] dated 22.07.2015, branding her 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 20.07.2015. According to the learned counsel for the petitioner, the representation, dated 20.07.2015, has been received by the Government on 07.08.2015 and remarks have been called for from the detaining authority on 10.08.2015 ; but, till date, no remarks have been received and the representation has not been considered by any of the authorities. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, the particulars till the column "remarks called for" have been furnished and the remarks have not been received till date, and the said inordinate delay of more than 4 months 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. The learned Additional Public Prosecutor would fairly submit that though the Government received the representation on 07.08.2015 and the remarks have been called for from the sponsoring authority on 10.08.2015, till date no remarks have been received from the sponsoring authority to place the case of the detenu before the authorities concerned, including the Minister for effective consideration.

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 20.07.2015, which was received by the Government on 07.08.2015, remarks have been called for from the detaining authority on 10.08.2015. But, the remarks have not been received from the Sponsoring Authority till date, for effective consideration of the detenu's case by the Under Secretary, Additional Secretary, Principal Secretary, Secretary [Law] and the Minister concerned. There is an inordinate and unexplained delay of more than 4 months. Even if we give concession to the intervening holidays

including Government holidays, still there is ample period of delay, 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 inordinate delay of more than 4 months. 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 the delay of four months 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 22.07.2015, 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(CO)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St george, Chennai 600 009.
- 2.The District Collector & District Magistrate
Erode District, Erode.
- 3.The Superintendent
Central Prison, Coimbatore
- 4.The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.
- 5.The Public Prosecutor, High Court, Madras.

H.C.P.No.2646/2015

CO-RV
JD 12/01/2016

सत्यमेव जयते
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