

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN  
and  
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.456/2015

D.Chandran

..

Petitioner

vs.

1.Government of Tamilnadu  
rep. by its Secretary  
Co-operation, Food and Consumer  
Protection Department  
Fort St. George, Chennai 600 009.

2.The Commissioner of Police  
Salem City.

3.The Additional Secretary to  
Government of India  
Ministry of Consumer Affairs  
Food and Public Distribution  
Department 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 brother detention under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) vide Detention Order dated 24.12.2014 on the file of the 2<sup>nd</sup> respondent herein made in proceedings in C.M.P.No.71/Black Marketer/Salem City/2014, and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely D.Sankar, S/o.Devaraj, aged about 27 years, before this Court and set the petitioner's brother at liberty from detention, who is now confined at Central Prison, Salem.

For petitioner : Ms.R.Subhadra Devi

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

For R3 : Mr.S.Arockiam, CGSC

## O R D E R

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

The Petitioner, who is the brother of the detenu, has filed this Petition challenging the order of detention passed by the 2<sup>nd</sup> respondent in C.M.P.No.71/Black Marketer/Salem City/2014, dated 24.12.2014, branding the detenu as a "Black Marketer" under the Tamil Nadu Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [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 06.02.2015. According to the learned counsel for the petitioner, the representation, dated 06.02.2015 has been received by the Government on 09.02.2015 ; the remarks were called on 11.02.2015. But the said remarks were received only on 20.02.2015, after a delay of 9 days. He adds that though the file was submitted to the Under Secretary on 26.02.2015, the Minister has dealt with the said file of the detenu only on 04.03.2015 and the rejection letter though prepared on 05.03.2015, was sent to the detenu only on 06.03.2015. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were two intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 7 days in considering the representation, 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 and learned Central Government Standing Counsel submitted that the Government received the representation on 09.02.2015 and that was forwarded to the Detaining Authority, calling for remarks on 11.02.2015 itself and remarks were received by the Government on 20.02.2015 and ultimately, the representation was considered and rejected on 05.03.2015 and the result of the consideration was communicated to the detenu on 06.03.2015. Therefore, there is no inordinate delay in considering the representation of the detenu and therefore, the learned counsel 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 06.02.2015 which was received by the Government on 09.02.2015, remarks have been called for from the Detaining Authority on 11.02.2015. But, remarks have been received by the Government only on 20.02.2015 and the case of the detenu was dealt with by the Minister only on 04.03.2015 and thereafter, the representation has been considered by the authorities concerned and rejected on 05.03.2015. From the above, it is clear that in between 11.02.2015 and 20.02.2015, there is a delay of nine days. Even if we give concession to the two intervening holidays, namely 14.02.2015 and 15.02.2015, 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 seven days delay has not been properly explained at all.

9.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 inordinate delay from 11.02.2015 to 20.02.2015, has not been properly explained at all.

10.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.

11.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.

12.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/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

paa

To

1.The Secretary  
Government of Tamilnadu  
Co-operation, Food and Consumer  
Protection Department  
Fort St. George, Chennai 600 009.

2.The Commissioner of Police  
Salem City.

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

4. The secretary to Government  
Home, Prohibition and Excise Department  
Fort St. George  
Chennai-9

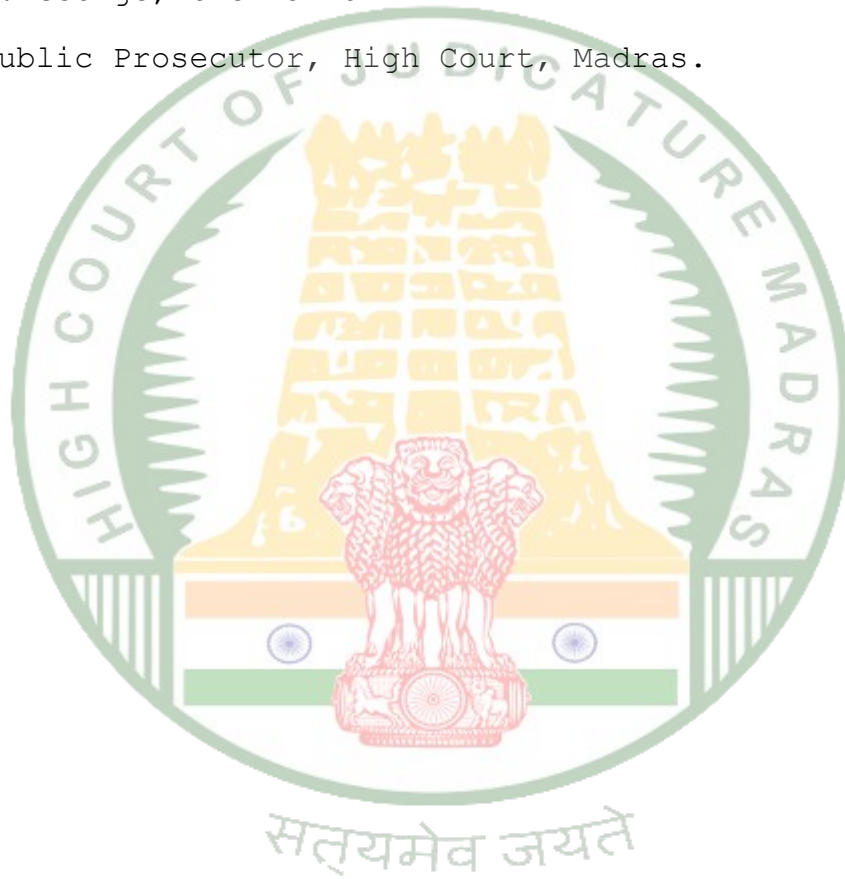
5. The Superintendent of Central Prison, Salem.

6. The Joint Secretary to Government  
Public (Law and order)  
Fort St. George, Chennai-9

7. The Public Prosecutor, High Court, Madras.

H.C.P.No.456/2015

BR (CO)  
kk 11/6



WEB COPY