

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.650 of 2015

K.Annamalai

..Petitioner

vs.

1.The Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai - 9.

2.The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.

3.The Secretary to Government of
India, Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
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 records in connection with the order of detention passed by the second respondent dated 05.02.2015 in S.C.No.07/2015 (CS) against the petitioner's niece Palanisamy, son of Selamban, aged about 43 years, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban

For Respondents: Mr.M.Maharaja,
Addl. Public Prosecutor for R1 & R2
Ms.N.K.Nithilavani, CGSC for R3

O R D E R

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

The Petitioner, who is the friend of the detenu, has filed this Petition challenging the order of detention passed by the second respondent in S.C.No.07/2015 (CS) dated 05.02.2015, branding the detenu as a "Black Marketeer" under the 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 10.02.2015. According to the learned counsel for the petitioner, the representation, dated 10.02.2015 has been received by the Government on 26.02.2015 ; the remarks were called on 03.03.2015. But the said remarks were received only on 19.03.2015, after a delay of 16 days. He adds that though the file was submitted on 25.03.2015, the Minister has dealt with the said file of the detenu only on 01.04.2015 and the rejection letter was sent to the detenu on 06.04.2015. 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 12 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 submitted that the Government received the representation on 26.02.2015 and that was forwarded to the Detaining Authority, calling for remarks on 03.03.2015 itself and remarks were received by the Government on 19.03.2015 and ultimately, the representation was considered and rejected on 01.04.2015 and the result of the consideration was communicated to the detenu on 06.04.2015. 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 citations 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 10.02.2015 which was received by the Government on 26.02.2015, remarks have been called for from the detaining authority on 03.03.2015. But, remarks have been received by the Government only on 19.03.2015 and the case of the detenu was dealt with by the Minister only on 01.04.2015 and thereafter, the representation has been considered by the authorities concerned and rejected on the same day i.e. on 01.04.2015. From the above, it is clear that in between 03.03.2015 and 19.03.2015, there is a delay of 16 days. Even if we give concession to the 4 intervening holidays, namely 07.03.2015, 08.03.2015, 14.03.2015 and 15.03.2015 respectively, still there is a delay of 12 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 12 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 12 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 03.03.2015 to 19.03.2015, 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 dated 05.02.2015, passed by the second 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 (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai - 9.

2.The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.

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

4.The Superintendent,
Central Prison, Salem.

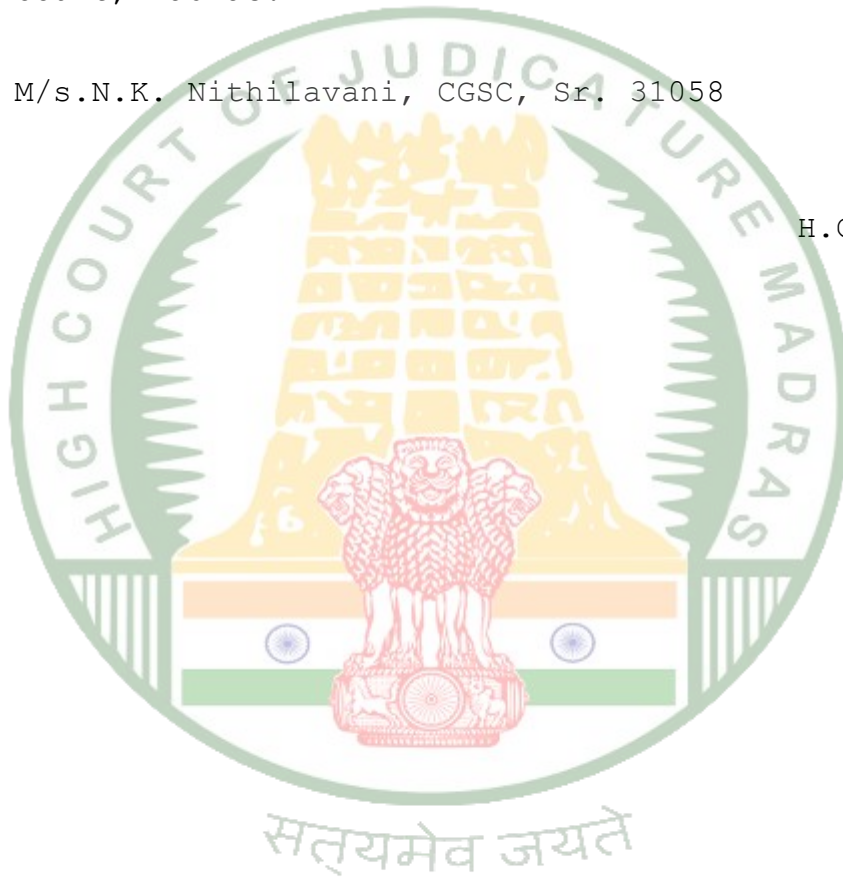
5. The Joint Secretary to Government
Public (law and order)
Fort Saint George, Chennai-9

6.The Public Prosecutor,
High Court, Madras.

1 cc to M/s.N.K. Nithilavani, CGSC, Sr. 31058

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