

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM

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

H.C.P.No.893 of 2015

Asipathi Mugapuna
W/o.Anwar Ali

... Petitioner

vs.

1.The Secretary to the Government,
Department of Consumer Affairs,
Government of India,
"Krishi Bhavan"
New Delhi - 110 001.

2.The Secretary to Government,
Co-operation Food and Consumer
Protection Department,
Secretariat, Chennai - 600 009.

3.District Collector and
District Magistrate,
Villupuram District,
Villupuram.

... 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 second respondent dated 23.03.2015 in C2/6201/2015 against the petitioner husband Anwar Ali, Male, aged 50 years S/o.Abdul Wahab, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.D.Ramesh Kumar, ACGSC [R1]
Mr.M.Maharaja
Additional Public Prosecutor [R2 & R3]

O R D E R

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

Challenge is made to the order of detention passed by the third respondent vide Proceedings in No.C2/6201/2015 dated 23.03.2015, whereby the detenu, by name, Anwar Ali, S/o.Abdul Wahab, aged about 50 years, was ordered to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980) branding him as "Black Marketeer".

2. Heard Mr.C.Prakasam, learned counsel for petitioner, Mr.D.Ramesh Kumar, learned Assistant Central Government Standing Counsel, appearing for first respondent and Mr.M.Maharaja, learned Additional Public Prosecutor for respondents 2 and 3.

3. Amidst several grounds, learned counsel for petitioner contended that the petitioner's representation dated 30.03.2015 made to the first respondent had been disposed of after much delay. The representation had been made on 30.03.2015 and the same was disposed of only on 28.04.2015. The unexplained delay in considering the representation of the detenu vitiates the detention order. In support of his contention, learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in Rajammal vs. State of Tamil Nadu [(1999) 1 SCC 417].

4. Resisting the contention of the learned counsel for the petitioner, learned Additional Public Prosecutor submitted that the representation was received only on 10.04.2015, remarks were called for on 15.04.2015 and received on 21.04.2015. Thereafter, the file was sent to the concerned authorities and finally, the petitioner's representation was rejected on 28.04.2015. Learned Additional Public Prosecutor further submitted that there had been seven intervening holidays. Therefore, according to 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.

5. This Court has considered the submissions and perused the materials available on record.

6. 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."

7. 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 has not been properly explained at all.

8. 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.

9. We are of the view that the delay in consideration of the petitioner's representation stands unexplained. The failure to consider the representation of the petitioner with promptitude is in violation of his fundamental rights enshrined under Articles 21 and 22(5) of the Constitution of India. On this ground alone, the impugned order of detention is liable to be set aside.

Accordingly, the habeas corpus petition is allowed and the detention order of detention passed by the third respondent in C2/6201/2015 dated 23.03.2015, 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

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gm

To

- 1.The Secretary to the Government,
Department of Consumer Affairs,
Government of India,
"Krishi Bhavan"
New Delhi - 110 001.

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2.The Secretary to Government,
Co-operation Food and Consumer
Protection Department,
Secretariat, Chennai - 600 009.

3.District Collector and
District Magistrate,
Villupuram District,
Villupuram.

4.The Public Prosecutor,
High Court, Madras.

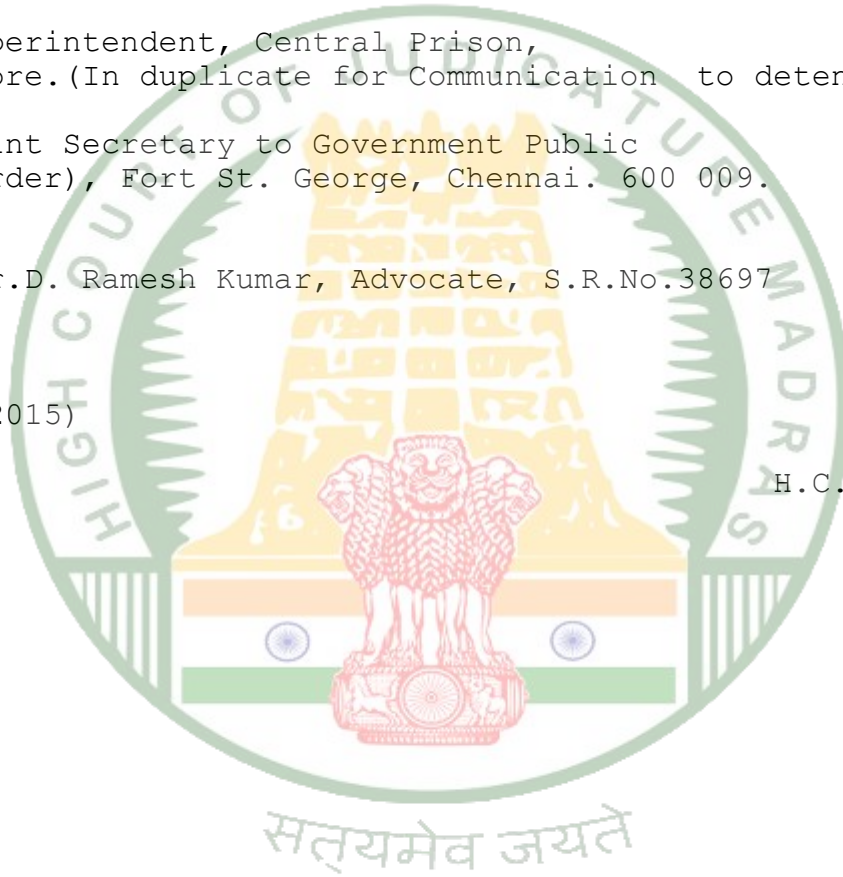
5. The Superintendent, Central Prison,
Cuddalore.(In duplicate for Communication to detenu)

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

+1cc to Mr.D. Ramesh Kumar, Advocate, S.R.No.38697

TS(CO)
EU(13/07/2015)

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