



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

H.C.P (MD) No.1431 of 2015

P.U.Nazeer

... Petitioner

Vs.

1. The Secretary to Government,
Department of Co-operation,
Food and Consumer Protection,
State of Tamil Nadu, Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
[Department of Consumer Affairs],
Room No.270, Krishi Bavan, New Delhi 110 001.
4. The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in H.S.[M].Confidential No.70 of 2015, dated 28.09.2015 and quash the same and direct the respondents to produce the body and person of the detenu namely Nazeer, S/o.Umar Ravuthar, aged about 40 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner	: Mr.R.Alagumani
For Respondent Nos.1,2&4	: Mr.A.Ramar, Additional Public Prosecutor.
For Respondent No.3	: Mr.P.Paul Pandi Senior Panel Counsel



ORDER

[Order of the Court was made by S.VAIDYANATHAN, J]

The petitioner is the detenu. He has been detained by the second respondent by his order in H.S.[M].Confidential No.70 of 2015, dated 28.09.2015, holding him to be a "Black Marketeer", as defined under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Act No.7 of 1980], taking note of the ground case in Crime No.145 of 2015 registered on the file of Thoothukudi Civil Supplies CID for offences punishable under Sections 6(4) of the Tamil Nadu Scheduled Commodities [Regulation of Distribution by Card System] order 1982 read with Section 7(i)(a)(ii) of the Essential Commodities Act, 1955.

2.The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of supplies of commodities essential to the community and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3.Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered without delay and there was an inordinate and unexplained delay. The learned counsel relies on a couple of Judgments of the Hon'ble Supreme Court and based on the same, the learned counsel would plead for setting aside the detention order.

4. The learned Additional Public Prosecutor, however, opposes this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone the impugned detention order need not be interfered with, as no prejudice has been caused to the detenu on account of the said delay and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The above submission made on both sides are taken into consideration and this Court passes the following order.

6. In this case, the Detention Order was passed on 28.09.2015 against the same, the petitioner made a representation on 03.10.2015, which was received on 05.10.2015. Thereafter, the District Collector was requested to give reply to



the petitioner, on 08.10.2015. However, such reply was given on 16.10.2015. It is the contention of the petitioner that there was delay of six working days in giving reply by the District Collector to the petitioner.

7. In **Rekha Vs. State of Tamil Nadu, [2011 (5) SCC 244]**, relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.

8. In other case cited by the learned counsel for the petitioner viz., **Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321]**, the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

9. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look at the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of six working days in considering the post-detention representation and rejecting it. By causing such delay, prejudice was caused to the detenu denying a reasonable opportunity of challenging the order of detention in an effective manner. Therefore, the impugned detention order is liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 28.09.2015, made in H.S.(M).Confidential No.70 of 2015, passed by the second respondent, the District Collector and District Magistrate, Thoothukudi District, Thoothukudi, and directs the release of the detenu, by name P.U.Nazeer, aged about 40 years, S/o.Umar Ravuthar forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



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Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.R.ALAGUMANI, ADVOCATE IN SR NO. 72536/15
+ 1 CC TO MR.P.PAUL PANDI, ADVOCATE IN SR NO. 72414/15

NB

TE/NGM-SS/: 29/12/2015 : 4P/8C

Order Made in
H.C.P (MD) No.1431 of 2015
17.12.2015