

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

H.C.P.No.2707/2015

Nirmala

..Petitioner/Wife

vs.

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

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

3.The Additional 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 calling for the records in Detention Order in Cr.M.P.No.31/Black Marketer/2015/C1 dated 14.09.2015 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's husband Prabhu, S/o Selvam @ Selvaraj, aged 30 years, the detenu herein now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For petitioner : Mr.R.Subhadra Devi

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

For R3 : Mr.G.Venkatesan, CGC

O R D E R

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

The Petitioner, who is the wife of the detenu, viz., Prabhu, son of Selvam @ Selvaraj, aged 30 years, has filed this Petition challenging the order of detention passed by the 2nd respondent in Cr.MP No.31/Black Marketer/2015/C1 dated 14.09.2015, branding her husband as a "BLACK MARKETER" under Section 3[2][a] r/w 3[1] 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 14.10.2015. According to the learned counsel for the petitioner, the representation, dated 14.10.2015, has been received by the Government on 15.10.2015, but the remarks have been called for from the detaining authority only on 20.10.2015, after a delay of five days and the remarks have been received by the Government only on 03.11.2015, with a further delay of fourteen days. He adds that the file was submitted to the Under Secretary on 11.12.2015 and further, the Minister has dealt with the said file of the detenu on 17.12.2015 and rejected on the same day. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were nine intervening holidays including Government Holidays and even after giving concession as to the intervening holidays, still there is a delay of ten days, 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 15.10.2015 and that was forwarded to the Detaining Authority, calling for remarks on 20.10.2015 and remarks were received by the Government 03.11.2015 and ultimately, the representation was considered and rejected on 17.12.2015 and the result of the consideration was communicated to the detenu on 18.12.2015. 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 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 14.10.2015, which was received by the Government on 15.10.2015, remarks have been called for from the detaining authority on 20.10.2015, i.e., after a delay of five days. The remarks have been received by the Government on 03.11.2015, i.e., after a further delay of fourteen days and the case of the detenu was dealt with by the Minister only on 17.12.2015 and rejected on the same day. From the above, it is clear that in between 15.10.2015 and 20.10.2015, [i.e., the intermittent days between the representation received and the remarks called for] there is a delay of 5 days ; and in between 20.10.2015 and 03.11.2015, [i.e, the intermittent days between the remarks called for and the remarks received], there is a further delay of 14 days. Even if we give concession to the nine intervening holidays including Government Holidays, namely 17.10.2015 ; 18.10.2015 ; 21.10.2015 ; 22.10.2015 ; 23.10.2015 ; 24.10.2015 ; 25.10.2015 ; 31.10.2015 and 01.11.2015, still there is a delay of ten 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 ten 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 ten days delay 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 14.09.2015, 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

//True Copy//

Sub Assistant Registrar

To

1.Government of Tamil Nadu, rep by its
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2.The District Collector and
District Magistrate, Erode District
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Room No.270, Krishi Bhavan
New Delhi 110 001.

4.The Public Prosecutor,
High Court,
Madras.

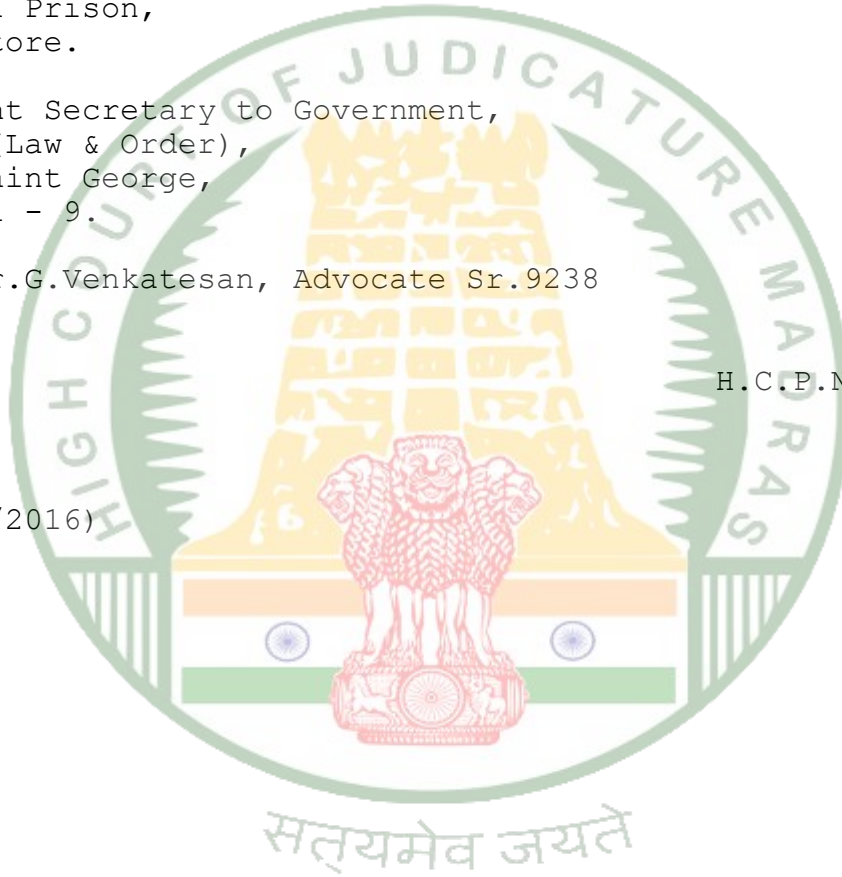
5.The Superintendent,
Central Prison,
Coimbatore.

6.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George,
Chennai - 9.

+1cc to Mr.G.Venkatesan, Advocate Sr.9238

H.C.P.No.2707/2015

ctk(CO)
srg(01/03/2016)



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