

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.2897 of 2015

Mrs.G.Indira

... Petitioner

Vs.

1. THE ADDITIONAL SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF CONSUMER AFFAIRS FOOD
AND PUBLIC DISTRIBUTION
ROOM NO. 270 KRISHI BHAVAN
NEW DELHI - 110 001.
2. THE SECRETARY GOVERNMENT
OF TAMIL NADU CO-OPERATION
FOOD AND CONSUMER PROTECTION DEPARTMENT
SECRETARIAT
CHENNAI - 600 009.
3. THE DISTRICT MAGISTRATE AND
DISTRICT COLLECTOR
CUDDALORE CUDDALORE DISTRICT.
4. THE INSPECTOR OF POLICE
C.S.CID CUDDALORE
CUDDALORE DISTRICT.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the entire records leading to the detention of the petitioner's brother who is detained as Black Marketer at Central Prison, Cuddalore by the 3rd respondent vide his order C3/D.O./41/2015 dated 14/09/2015 and quash the same as illegal, and consequently direct the respondents 1, 2 and 3 to produce the body of the detenu SEENU (A) SEENIVASAN S/O PARIMALAM, aged about 30 years, from the Central Prison, Cuddalore, before this court and set at liberty.

For Petitioner : M/s.Om Sri Sairam Associates

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor
for RR 2 to 4

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner herein is sister of the detenu, viz., Seenu @ Seenivasan, S/o.Parimalam, and she has filed this petition challenging the order of detention passed by the 3rd respondent in C3/D.O./41/2015 dated 14/09/2015, branding her brother 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. According to the learned counsel for the petitioner, the representation of the detenu dated 13.10.2015, has been received by the Government on 15.10.2015 and though the remarks have been called for from the detaining authority on 19.10.2015 ; till date no remarks have been received nor the any rejection order has been passed. The inordinate and unexplained delay of more than 3 months 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.Heard the submissions of the learned Additional Public Prosecutor and perused the materials available on record.

4.It is the contention of the learned counsel for the petitioner that the representation dated 13.10.2015 sent to the authorities concerned has been received by them on 15.10.2015 and the remarks were called for from the authorities concerned on 19.10.2015 ; but till date, the said representation is yet to be considered. The above contention is substantiated from the perusal of the typed set of papers [page Nos.21 to 25], wherein the petitioner's representation dated 13.10.2015 has been sent by registered Post with Acknowledgment Due and despite receipt of such representation, it is yet to be disposed of.

5.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 more than 3 months. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

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 of more than 3 months 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.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.

10. Accordingly, the habeas corpus petition is allowed and the detention order passed by the 3rd 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(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

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4. THE INSPECTOR OF POLICE
C.S.CID CUDDALORE
CUDDALORE DISTRICT.
5. THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.
6. THE JOINT SECRETARY TO GOVERNMENT,
PUBLIC(LAW & ORDER),
FORT SAINT GEORGE, CHENNAI - 9.
7. THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

H.C.P.No.2897 of 2015

GJ(CO)
CA(11/02/2016)