

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

Coram:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.750 of 2016

Merlin

.. Petitioner

vs.

- 1.The Secretary to Government
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai.
- 2.The Commissioner of Police,
Chennai Police, Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.Secretary to Government,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department Of Consumer Affairs)
Room No.270, Krishi Bhawan,
New Delhi - 110 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the second respondent dated 24.03.2016 in Memo No.7/Black Marketing Act/2016 against the petitioner's husband Paulraj, son of Abraham, aged about 31 years, who is confined at Central Prison, Puzhal, Chennai 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.V.M.R.Rajentren

Addl. Public Prosecutor (Crl.side)
for R1 and R2

Mr.S.Arockiam, CGSC for R3

O R D E R

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

This Habeas Corpus Petition is filed by the wife of the detenu, namely, Paulraj, aged 31 years, Son of Abraham, to issue a Writ of Habeas Corpus, to call for the records, in No.07/2016 dated 24.03.2016, passed by the second Respondent, detaining the detenu, under Section 3(2)(b) r/w Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980), as a "Black Marketeer", in the Central Prison, Puzhal, Chennai, and to quash the same and to direct the respondents to produce the body of the detenu and set him at liberty forthwith.

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 calling for remarks on the representation of the detenu. According to the learned counsel for the petitioner, the representation of the detenu, has been received on 11.04.2016. However, the remarks have been called for by the Government only on 18.04.2016, after a delay of 7 days. It is his further submission that as per the Proforma submitted by the learned Additional Public Prosecutor, there were 3 intervening holidays and even after giving concession as to the intervening holidays, still there is a delay of 4 days, which remains unexplained. Further, as per the Proforma, remarks on the representation of the detenu have not been received so far. The unexplained delay in calling for remarks on 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, the learned Additional Public Prosecutor appearing for the respondents had submitted that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. 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, the representation of the detenu was received on 11.04.2016. However, remarks have been called for by the

Government only on 18.04.2016, i.e., after a delay of 7 days. From the above, it is clear that in between 11.04.2016 and 18.04.2016, [i.e., the intermittent days between the representation received and the remarks called for] there is a delay of 7 days. Even if we give concession to the 3 intervening holidays including Government holidays, namely 14.04.2016, 16.04.2016 and 17.04.2016 still there is a delay of 4 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 4 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 4 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 passed by the third respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

2.The Commissioner of Police,
Chennai Police,
Office of the Commissioner of Police,
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(Department Of Consumer Affairs)
Room No.270, Krishi Bhawan,
New Delhi - 110 001.

4. The Superintendent,
Central Prison, Puzhal, Chennai

5. The Public Prosecutor,
High Court, Madras

6.The Joint Secretary to Government
Public Law and Order Fort St.George Chennai-9

+1 cc to Mr.S.Arockiam Advocate vide sr 46807

H.C.P.No.750 of 2016

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