

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER  
&  
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1221 of 2017

Jakeer @ Mohamed Sakkeer

... Petitioner

Vs.

1. The Commissioner of Police,  
Coimbatore City,  
Coimbatore.
2. The Secretary to the Government,  
Tamil Nadu Co-operative, Food and Consumer  
Protection Department,  
2<sup>nd</sup> Floor Namakkal Kavingnar Maligai,  
Secretariat, Chennai-600 009.
3. The Additional Secretary to the Government of India,  
Ministry of Consumer affairs,  
Food and Public Distribution,  
(Department of Consumer Affairs)  
Room No.270, Krishi Bhawan,  
New Delhi-110011.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to Detention Order C.No.03/PBMMSEC Act/IS/2017 on the file of the 1<sup>st</sup> respondent, quash the detention order dated 14.06.2017 and direct the production of the detenu J. Mohamed Sabeer son of Jakeer @ Mohamed sakkeer presently detained at the Central Prison, Coimbatore under the Act 7 of 1980 before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.H.Rajasekar

**\*For R1 & R2 : Mr.V.M.R.Rajentran,  
Additional Public Prosecutor**

**For R3 : Mr.S.Arockiam**

O R D E R  
(Order of the Court was made by N.SATHISH KUMAR, J)

The petitioner is the father of the detenu, namely, J.Mohamed Sabeer, Son of Jakeer @ Mohamed Sakkeer, male, aged about 23 years. The detenu has been detained by the first respondent by his order in C.No.03/PBMMSEC Act/IS/2017 dated 14.06.2017, holding him to be an offender under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980) The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay with regard to the same.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 14.06.2017. The petitioner made a representation, dated 28.06.2017 and the same was received on 05.07.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.07.2017. The remarks were duly received on 17.07.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 25.07.2017.

6. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. Thereafter, there was another delay of 8 days in considering the representation, of which 2 days were Government

Holidays and hence, there was an inordinate delay of 6 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu*, reported in 2011 (5) SCC 244, the Honourable Supreme Court has 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 undertaken by the detenu.

8. In *Sumaiya vs. The Secretary to Government*, reported in 2007 (2) MWN (Cr.) 145, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority and 6 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.03/PBMMSEC Act/IS/2017 dated 14.06.2017, passed by the first respondent is set aside. The detenu, namely, J.Mohamed Sabeer, S/o.Jakeer @ Mohamed Sakkeer, male, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-

Assistant Registrar(CCC)

Dated : 24.10.2017

**\*Corrected as per letter dated  
30.10.2017**

**Sd/- Assistant Registrar(CCC)**

**Dated : 06.11.2017**

//True Copy//

Sub Assistant Registrar

nmm/vsm

To

1. The Commissioner of Police,  
Coimbatore City,  
Coimbatore.
2. The Secretary to the Government,  
Tamil Nadu Co-operative, Food and  
Consumer Protection Department,  
2<sup>nd</sup> Floor Namakkal Kavingnar Maligai,  
Secretariat, Chennai-600 009.
3. The Additional Secretary to  
the Government of India,  
Ministry of Consumer affairs,  
Food and Public Distribution,  
(Department of Consumer Affairs)  
Room No.270, Krishi Bhawan,  
New Delhi-110011.
4. The Superintendent,  
Central Prison,  
Coimbatore.
5. The Public Prosecutor,  
Madras High Court,  
Chennai.

+1cc to Mr.S.Arockiam, Advocate, S.R.No.74793

To be Substituted

to the Order already

despatched on

25.10.2017

H.C.P.No.1221 of 2017

GN(25/10/2017)

RSI(CO)  
CA(06.11.2017)

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