

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2017

Coram

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

H.C.P.No.1258 of 2017

S.Premnath Kumar
S/o Subramani

... Petitioner

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
Cuddalore District,
Cuddalore.

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

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in Detention order in No.C3/D.O/36/2017 dated 20.06.2017 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's mother Kanchana, wife of Subramani, aged 46 years the detenuue herein now confined in Central Prison for Women, Vellore before this Court and set her at liberty.

For Petitioner : Ms.R.Subhadra Devi
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

**(*) For Respondent -3: MR.S.AROCKIAM
CGSC**

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J)

The petitioner is the son of the detenu, namely, Kanchana, wife of Subramani, female, aged about 46 years. The detenu has been detained by the second respondent by his order in No.C3/D.O/36/2017 dated 20.06.2017, holding her to be a "Black Marketeer", as contemplated under the Provision of 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 20.06.2017. The petitioner made a representation, dated 10.07.2017 and the same was received on 11.07.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.07.2017. The remarks were duly received on 07.08.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.08.2017.

6. It is the contention of the petitioner that there was a delay of 26 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holidays and hence there was an inordinate delay of 18 days in submitting the remarks. Thereafter, there was another delay of 8 days in

considering the representation, of which 4 days were Government Holidays, hence, there was another inordinate delay of 4 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 18 days in submitting the remarks by the Detaining Authority and 4 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 No.C3/D.O/36/2017 dated 20.06.2017, passed by the second respondent is set aside. The detenu, namely, Kanchana, wife of Subramani, female, aged about 46 years, is directed to be released forthwith unless her 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/-

Asst.Registrar (CS-IV)
(04/10/2017)

Sd/-

Assistant Registrar(CS-II)
(DATED:02.01.2018)

(*CORRECTED AS PER ORDER DATED 07/11/2017)

//True Copy//

Sub Assistant Registrar

vsm

To

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

CORRECTED ORDER TO BE
SUBSTITUTED FOR THIS
ORDER ALREADY DESPATCHED
ON 05.10.2017

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

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.

4.The Superintendent of Special Prison for Women,
Vellore. (By Fax)

4.The Superintendent,
Women Sub Jail, Cuddalore.

5.The Public Prosecutor,
Madras High Court,
Chennai.

6.The Joint Secretary to Government,
Public (Law & Order), Secretariat, Fort St. George,
Chennai-600 009.

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H.C.P.No.1258 of 2017

NR 04/10/2017
TR(02/01/2018)