

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2017

Coram

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

H.C.P.No.1642 of 2017

Chennakesavan

.... Petitioner/Father of the
detenue

Vs.

- 1.The Secretary to the Government
Department of Consumer Affairs
Government of India, "Krishi Bhavan"
New Delhi 110 001.
- 2.The Secretary to the Government
Co-Operation Food and Consumer Protection Dept.
Secretariat, Chennai 600 009.
- 3.The District Collector & District Magistrate
Krishnagiri District
Krishnagiri

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the third respondent 24.06.2017 in S.C.No.38/2017 against the petitioner son Kanagaraj, Male aged 38 years S/o.Chennakesavan, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

For Respondent 3 : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

For Respondent :* Mr.S.Arockiam, CGSC for R1

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, Kanagaraj, S/o.Chennakesavan, male, aged about 38 years. The detenu has been detained by the third respondent by his order in S.C.No.38/2017 dated 24.06.2017, holding him to be a "Black Marketer" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. 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 24.06.2017. The petitioner made a representation dated 28.08.2017 and the same was received on 06.09.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.09.2017. The remarks were duly received on 20.09.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation 23.09.2017.

6. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays and hence there was an inordinate delay of 9 days in submitting the remarks.

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 3 days in submitting the remarks by the Detaining Authority. 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.S.C.No.38/2017 dated 24.06.2017, passed by the third respondent is set aside. The detenu, namely, Kanagaraj, S/o.Chennakesavan, male, aged about 38 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(CS V)

Dated: 14/11/2017

* Deleted as per letter dated 16/11/2017 by the Counsel for the 1st respondent in HCP.1642/17.

Sd/-

Assistant Registrar(CS II)

Dated: 08/12/2017

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government
Department of Consumer Affairs
Government of India, "Krishi Bhavan"
New Delhi 110 001.

To be Substituted to
this Order already
despatched on
15/11/2017

2.The Secretary to the Government
Co-Operation Food and
Consumer Protection Dept.
Secretariat, Chennai 600 009.

3.The District Collector &
District Magistrate
Krishnagiri District
Krishnagiri

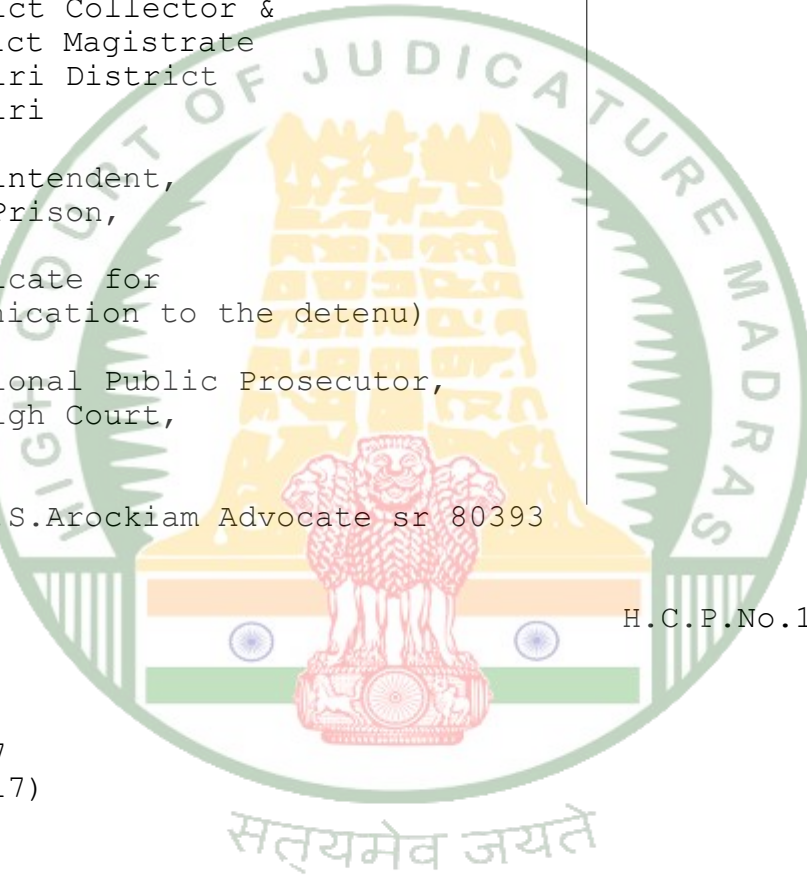
4.The Superintendent,
Central Prison,
Salem.
(In duplicate for
communication to the detenu)

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

+1 cc to Mr.S.Arockiam Advocate sr 80393

H.C.P.No.1642 of 2017

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