

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1682 of 2017

R.Chithra ... Petitioner/W/o the detenue

-vs-

- 1.The Principal Secretary to Government,
Co operation Food and Consumer Protection
Department, 2nd Floor,
Namakkal Kavignar Maligai,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Erode District, Erode.
- 3.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, to call for the records in connection with the order of detention passed by the second respondent 26.07.2017 in Cr.M.P.No.15/Black Marketeer/2017 C1 against the petitioner's husband Rangasamy, Son of (Late) Senna Naicker, aged about 40 years, who is confined at Central Prison, Coimbatore 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 Respondent : Mr. V.M.R.Rajentran for R1 & R2
Additional Public Prosecutor
Mr.Arokiam for R3
CGSC

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

The petitioner is the Wife of the detenu, namely,
<https://hcservices.courts.gov.in/hcservices/>
Thiru.Rangasamy, Son of (Late) Senna Naicker, Male, aged about

40 years. The detenu has been detained by the 2nd respondent by his order in Cr.M.P.No.15/Black Marketeer/2017 Cl, dated 26.07.2017, holding him to be a "Black Marketeer", as contemplated under provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 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 in 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 26.07.2017. The petitioner made a representation, dated 20.08.2017 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 28.09.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.10.2017.

6.It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 15 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 Anbazhagansthan 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 15 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 Cr.M.P.No.15/Black Marketeer/2017 Cl, dated 26.07.2017, passed by the 2nd respondent is set aside. The detenu, namely, Thiru.Rangasamy, Son of (Late) Senna Naicker, Male, aged about 40 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 VIII)

//True Copy//

Sub Assistant Registrar

ggs/pam

To:

1. The Principal Secretary to Government,
Co operation Food and Consumer Protection
Department, 2nd Floor,
Namakkal Kavignar Maligai,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Erode District,
Erode.
3. Additional Secretary to Government of India,
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Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.

4.The Superintendent,
Central Prison,
Coimbatore.

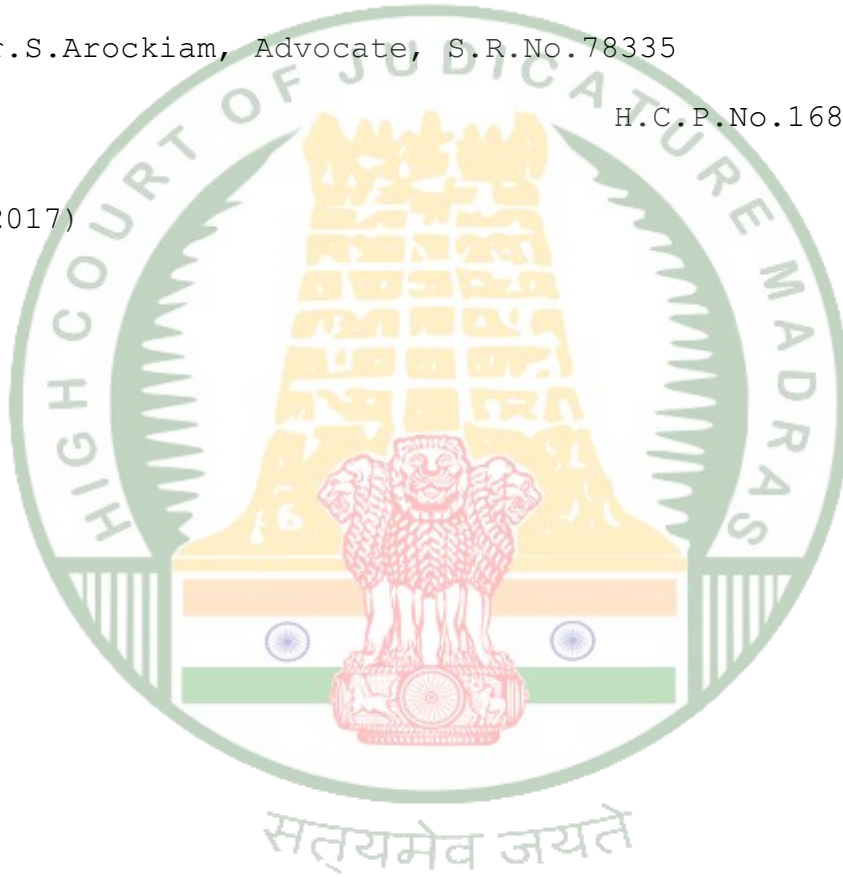
5.The Joint Secretary,
Public law and Order Department,
Secretariat, Chennai-9

6.The Public Prosecutor,
Madras High Court,
Madras.

+1cc to Mr.S.Arockiam, Advocate, S.R.No.78335

H.C.P.No.1682 of 2017

GN(06/11/2017)



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