

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE R.HEMALATHA

H.C.P.No.123 of 2018

Janani

... Petitioner

versus

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. District Collector and
District Magistrate,
Vellore District,
Vellore - 9.

... Respondents

Hebeas Corpus Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the third respondent 29.12.2017 in C3.D.O.No.128/2017 against the petitioner's husband Prabu, aged 35 years, S/o.Chennakesavan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents 2 & 3: Mr.R.Prathap Kumar
Additional Public Prosecutor

**R1 : Mr.S.Arockiam, CGSC.,
Corrected as per letter dated
25/07/2018)**

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

29.12.2017 as against Prabu, S/o Chennakesavan, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Black Marketeer' and he has to be detained under Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980) with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the wife of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.D.Balaji, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. It is contended that there is a delay in considering the representation and this has rendered the detention illegal. Learned Addl. Public Prosecutor appearing for the respondents submits that though there is only a delay of 15 days, but it in no way vitiates the order of detention. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the delay.

5. In Rashid Kapadia v. Medha Gadgil, (2012 (11) SCC 745), the Supreme Court had occasion to consider the effect of delay in considering the representation and in that context held as under :-

"13.It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the authority concerned as expeditiously as possible, is a constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of judgments where the principle is discussed in detail. They are: Mohinuddin v. District Magistrate, Beed [(1987) 4 SCC 58 : 1987 SCC (Cri) 674] and Harshala Santosh Patil v. State of Maharashtra [(2006) 12 SCC 211 : (2007) 1 SCC (Cri) 680]."

6. In view of the above proposition, the delay in considering the representation submitted by the petitioner, which has not been explained properly, has vitiated the order of detention. The delay is fatal to the order of detention and this has rendered the detention illegal.

<https://hcservices.ecourts.gov.in/hcservices/>

7. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Prabu, S/o

Chennakesavan, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/--
Assistant Registrar(co)
Dated: 09/07/2018

*** Corrected order to
be issued**

**Sd/- Assistant Registrar(CO)
Dated: 02/08/2018**

//True Copy//

Sub Assistant Registrar

ogy

To

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

2. The Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St. George,
Chennai - 600 009.

3. The District Magistrate and
District Collector,
Vellore District,
Vellore.

4. The Superintendent
Central Prison
Vellore.

5. The Joint Secretary to Government,
Public (Law & Order)
Fort Saint, George,
Chennai 9.

6. The Public Prosecutor
High Court, Madras.

**To be substituted to
the order already
despatched dated
19/07/2018**

+1cc to Mr.S.Arociam, Advocate Sr.No.37642

GJII(CO)
sm:10.7.2018
GN(02/08/2018)