

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 156 OF 2018

Kumutha

.. Petitioner

- Vs -

1. The Government of Tamil Nadu
rep. By its Secretary
Co-operation, Food & Consumer
Protection Department
Fort St. George, Chennai 600 009.
 2. The District Collector &
District Magistrate
Erode District, Erode.
 3. The Addl. Secretary to Government
of India, Ministry of Consumer Affairs
Food & Public Distribution
Department of Consumer Affairs
Room No.270, Krishi Bhavan
New Delhi 110 001.
- ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records pertaining to the detention order made in Cr. M.P. No.27/Black Marketeer/2017/C1 dated 30.12.2017 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu, Prakash, S/o Arunachalam, aged about 32 years, now confined at Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty.

For Petitioner : Ms. R.Subadra Devi

For Respondents: Mr. R.Prathap Kumar, APP for RR-1 & 2
Mr. S.Arockiam, CGSC for R-3

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

The 2nd respondent, District Collector & District Magistrate, Erode, clamped an order of detention on 30.12.2017 as against Prakash, S/o Arunachalam, 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 Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (Central 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 petitioner has come forward with the present habeas corpus petition.

3. Heard Ms.Subadra Devi, learned counsel appearing for the petitioner, Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the 2nd respondent and Mr.S.Arockiam, learned standing counsel for Central Government appearing for the 3rd respondent.

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 2nd respondent and the learned standing counsel for the Central Government appearing for the 3rd respondent submitted that though there is a delay of 13 days in considering the representation, but the said delay 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.

7. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Prakash, S/o Arunachalam, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Government of Tamil Nadu
rep. By its Secretary
Co-operation, Food & Consumer
Protection Department
Fort St. George, Chennai 600 009.
2. The District Collector &
District Magistrate
Erode District, Erode.
3. The Addl. Secretary to Government
of India, Ministry of Consumer Affairs
Food & Public Distribution
Department of Consumer Affairs
Room No.270, Krishi Bhavan
New Delhi 110 001.
4. The Superintendent of Police,
Central Prison,
Coimbatore.

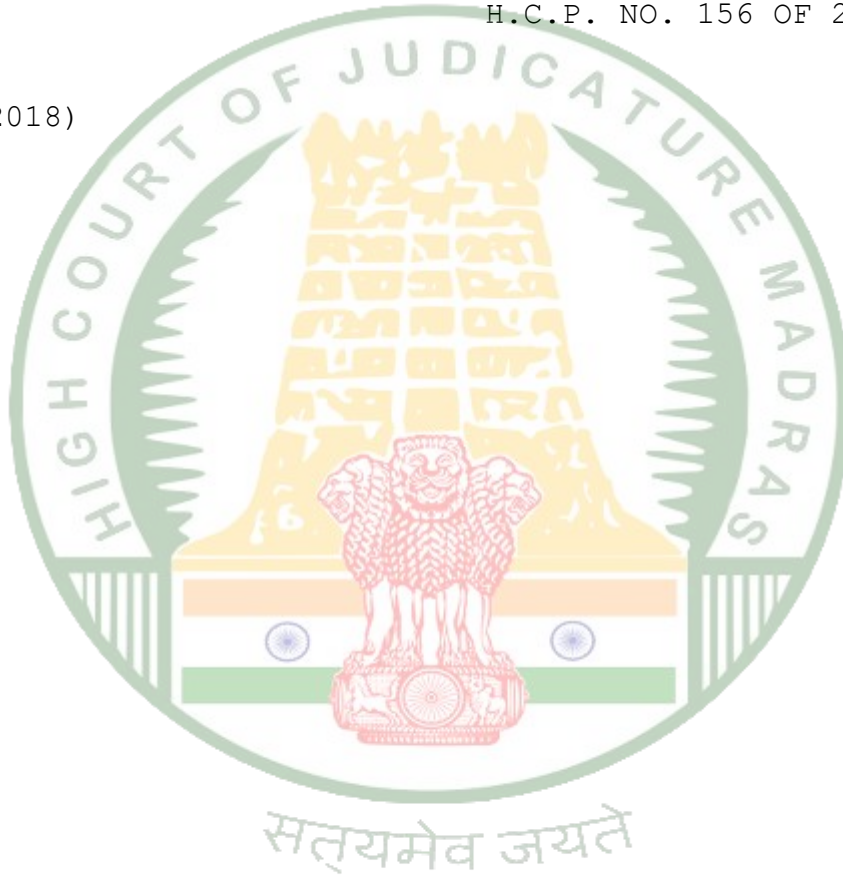
5.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai-9.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Arockiam, Advocate SR.No.38331
+1cc to Mr.R.Subadra Devi, Advocate SR.No.38187

H.C.P. NO. 156 OF 2018

SJ(CO)
GN(06/07/2018)



WEB COPY