

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P.No.360 of 2018

Jagadeeswari

... Petitioner

versus

1. Union of India,
Rep. by its Additional Secretary
to Government,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
New Delhi - 110 001.

2. State of Tamil Nadu,
Rep. by its Secretary to Government,
Cooperation, Food and Consumer
Protection of department,
Secretariate, Chennai - 600 009.

2. The Commissioner,
Greater Chennai,
Chennai.

... Respondents

Habeas Corpus Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 3rd respondent pertaining to the order made in No.01/2018, dated 25.01.2018 is detaining the detenu Section 3 (2) (b) read with 3(1) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) and quash the same and consequently, direct the respondents to produce the detenu M.Chakaravarthy, Son of Murugesan, aged about 45 years, who is detained at the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.Arivazhagan

For R1 : Mr.S.Arockiam, CGSC

For R2 and R3 : Mr.R.Prathap Kumar

Additional Public Prosecutor

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

The third respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on 25.01.2018 as against Chakravarthy, S/o.Murugesan, 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(2)(b) read with 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.C.Arivazhagan, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents 2 and 3.

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 9 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.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
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2. The Secretary to Government,
Cooperation, Food and Consumer
Protection of department,
Secretariate, Chennai - 600 009.
3. The Commissioner,
Greater Chennai,
Chennai.
4. The Superintendent of Police,
Central Prison, Puzhal, Chennai.

+ 1 cc to Mr. S. Arockiam, Advoctae Sr.38929

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SV(CO)
EU(06/07/2018)

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