

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P.No.521 of 2018

Parameshwari

... Petitioner/Mother of the
detenu

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 Department,
Secretariat, Chennai - 600 009.

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

... Respondents

Prayer: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 in connection with the order of detention passed by the third respondent dated 20.02.2018 in D.No.12 of 2018 against the petitioner's son Vadivel Murugan @ Vadivel, aged 27 years, S/o.Chithambaram, 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 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, District Collector and District Magistrate, Kancheepuram District, clamped an order of detention on 20.02.2018 as against Vadivel Murugan @ Vadivel, S/o.Chithambaram, 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 mother 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 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 14 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, Vadivel Murugan @ Vadivel, S/o.Chithambaram, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/--

Assistant Registrar(CS VII)

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To

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Protection Department,
Secretariat, Chennai - 600 009.
3. The District Collector and
District Magistrate,
Vellore District,
Vellore - 9.
4. The Superintendent of Police,
Central Prison, Vellore.
5. The Joint Secretary to Government
Public (Law & Order),
Fort St. George, Chennai -9.
6. The Public Prosecutor
High Court, Madras 104.

+1cc to Mr.S.Arockiam, Advocate SR.No.40208

MR(CO)
sm:19.7.2018

H.C.P.No.521 of 2018

सत्यमेव जयते

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