

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.572 of 2018

P.Kumaresan

... Petitioner/Brother in
Law of the Detenu

versus

1. Government of Tamilnadu,
Rep. by its Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St. George, Chennai - 600 009.
2. The District Magistrate and
District Collector, Salem District,
Salem.
3. The 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:-

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 Detention Order in C.M.P.No.01/PBMMSEC Act/2018 (C2) dated 10.01.2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the body of the petitioner's brother-in-law Govindan, aged 37 years, son of Palani Gounder, the detenu herein now confined in Central Prison, Salem.

For Petitioner :	Mrs.R.Subadra Devi
For R1 and R2 :	Mr.R.Prathap Kumar
	Additional Public Prosecutor
For R3 :	Mr.S.Arockiam, CGSC

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

The second respondent, District Magistrate and District Collector, Salem District, clamped an order of detention on 10.01.2018 as against Govindan, S/o.Palanigounder, 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 brother-in-law of the detenu has come forward with the present Habeas Corpus Petition.

3. Heard Mrs.R.Subadra Devi, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents 1 and 2.

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 39 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, Govindan, S/o.Palanigounder, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

7. The Additional Solicitor General of India,
High Court, Madras-104.

+lcc to Thiru.Mr.S.Arockiam, Advocate, S.R.No.40207

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CS/16/07/18



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