

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

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

Habeas Corpus Petition No.579 of 2018

Rajkumar .. Petitioner
/ Son of the detenue

- Vs -

1. The Secretary to Government,
Department of Consumer Affairs,
Government of India, Krishi Bhavan,
New Delhi 110 001
2. The Secretary to the Government,
Cooperation, Food and Consumer Protection Dept.,
Secretariat, Chennai 600 009
3. The District Collector and
District Magistrate,
Vellore District, Vellore 9 .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in Proceedings No.C3/DO/No.13/2018, dated 26.02.2018 on the file of the third respondent herein, to set aside the same as illegal and direct the respondents to produce the petitioner's father, the detenue, Ganesan, Male, aged 61 years, S/o.Ramasamy, now confined at Central Prison, Vellore, before this Hon'ble Court and to set him at liberty.

For Petitioner : Mr. D.Balaji
For Respondents: Mr. S.Arockiam, CGSC, for R-1,
Mr. R.Prathap Kumar, APP, for R2 & R3

ORDER
(Order of the Court was made by S.Vimala, J.,)

The third respondent herein clamped an order of detention on 26.02.2018 as against the petitioner's father, the detenue, Ganesan, Male, aged 61 years, S/o.Ramasamy, as the said authority arrived at the subjective satisfaction that the said detenue is a 'Black Marketer' and he has to be detained under the provisions of the Prevention of Black Marketing and Medicine of Supplies of Essential Commodities Act, 1980, with a view to

preventing him from acting prejudicial to the maintenance of supplies of commodities essential to the community.

2. Challenging the order of detention, the son of the detenu has come forward with the present Habeas Corpus Petition.

3. Heard the learned counsel appearing for both sides.

4. It is contended by the learned counsel appearing for the petitioner that though the petitioner had made a representation to the respondents on 12.03.2018, till date the same has not been considered by the respondents and hence, the delay in considering the representation has rendered the detention illegal.

4.1. The learned Additional Public Prosecutor appearing for the respondents submitted that the delay in considering the representation in no way vitiates the order of detention.

4.2. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the reasons for the delay.

5. In the case of 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 petitioner's father, the detinue, Ganesan, Male, aged 61 years, S/o.Ramasamy, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. The Secretary to Government, Department of Consumer Affairs, Government of India, Krishi Bhavan, New Delhi 110 001
2. The Secretary to the Government, Cooperation, Food and Consumer Protection Dept., Secretariat, Chennai 600 009
3. The District Collector and District Magistrate, Vellore District, Vellore 9
4. The Superintendent of Prisons, Central Prison, Vellore.
5. The Public Prosecutor, Madras High Court, Chennai - 104

+lcc to Mr.C.Arockiam, Advocate SR.No.40586

RSY-RJ(CO)
EU:31.7.2018

सत्यमेव जयते

H.C.P.No.579 of 2018

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