

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.726 of 2018

S.Shanthi .. Petitioner

- Vs -

1. Government of Tamil Nadu, Rep. by its Secretary,
Cooperation, 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, 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 relating to the detention order in No.CMP No.03/PBMMSEC Act/2018 (C2), dated 05.02.2018 on the file of the second respondent herein, to set aside the same as illegal and direct the respondents to produce the body of the petitioner's husband, Thiru.P.T.Sekar, aged 42 years, S/o.Thulasimani, the detenu herein, now confined at Central Prison, Salem, before this Hon'ble Court and to set him at liberty.

For Petitioner : Mr. S.Vijayakumar

For Respondents: Mr. R.Prathap Kumar, APP, for R1 & R2,
Mr. S.Arockiam, CGSC, for R-3

O R D E R

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

The second respondent, District Magistrate and District Collector, Salem, clamped an order of detention on 05.02.2018 as against the petitioner's husband, Thiru.P.T.Sekar, aged 42 years, S/o.Thulasimani, the detenu herein, as the said authority arrived at the subjective satisfaction that the said detenu 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 wife 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 that there is a delay in considering the representation and this has rendered the detention illegal.

4.1. The learned Additional Public Prosecutor appearing for the respondents submitted that there is a delay of 36 days only, in considering the representation and it 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.

8. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The petitioner's husband, Thiru.P.T.Sekar, aged 42 years, S/o.Thulasimani, the detenu herein, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/--

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Government of Tamil Nadu,
Cooperation, 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, Room No.270,
Krishi Bhavan, New Delhi 110 001
4. The Public Prosecutor, Madras High Court, Chennai - 104
5. The Superintendent of Prisons, Central Prison, Salem.
6. The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai-9

+2cc to M/s.S.Sivakumar, Advocate SR.No.40691

+1cc to M/s.S.Arockiam, Advocate Sr.No.40587

RSK(CO)

sm:12.7.2018

H.C.P.No.726 of 2018

सत्यमेव जयते

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