

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

Coram

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

H.C.P. No. 1520 of 2020

P.K. Jaseena

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police/
Detaining Authority,
City Police Office,
Huzur Road,
Coimbatore City,
Coimbatore - 18.

3. The Addl. Secretary.
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No. 270, Krishi Bhawan,
New Delhi - 110 001.

4. The Superintendent of Prison,
Central Prison - Coimbatore,
Coimbatore District.

5. State rep. by its
The Sub Inspector of Police,
CSCID - Pollachi,
Coimbatore District.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 21.08.2020 on the file of the second respondent herein made in proceedings Memo C.No.01/PBMMSEC Act/IS/2020, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely M.Abi @ Habeeb Rahuman, S/o. Mohamed Ismail, aged 44 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W. Camyles Gandhi
For Respondents : Mr.R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of the detenu, M.Abi @ Habeeb Rahuman, S/o. Mohamed Ismail, aged 44 years. The detenu has been detained by the second respondent by his proceedings in Memo C.No.01/PBMMSEC Act/IS/2020 dated 21.08.2020 holding him to be a "Black Marketeer", under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been

caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 21.08.2020. The petitioner made a representation on 01.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.09.2020. The remarks were duly received on 15.09.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.09.2020.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 15.09.2020 and there was a delay of 7 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies after the Deputy Secretary dealt with it, of which one day was a Government Holiday, hence, there was an inordinate delay of 6 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In *Sumaiya vs. The Secretary to Government* (2007 (2) MWN (Cr.) 145), a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority and unexplained delay of 6 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo C.No.01/PBMMSEC Act/IS/2020 dated 21.08.2020, passed by the second respondent is set aside. The detenu, namely, M.Abi @ Habeeb Rahuman, S/o. Mohamed Ismail, aged 44 years is directed to be released forthwith unless his detention is required in connection with any other case.

-sd-
Assistant Registrar

True copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police/
Detaining Authority,
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Huzur Road,
Coimbatore City,
Coimbatore - 18.
3. The Addl. Secretary,
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Ministry of Consumer Affairs,
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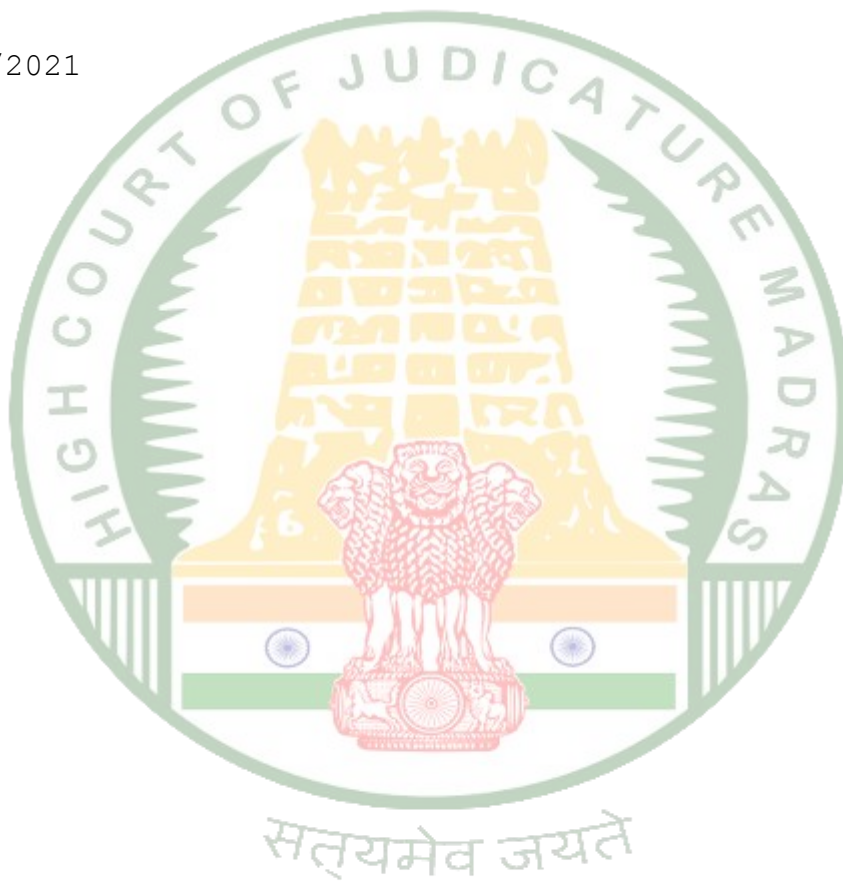
6 The Joint Secretary to Government
public Law and Order, Fort St George, Chennai 9.

7 The Public Prosecutor,
High Court, Madras 104.

H.C.P. No. 1520 of 2020

RGN (CO)

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