

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 1668 of 2020

Cinnathambi ... Petitioner/Father of Detenue

Vs

1. State of Tamil Nadu,
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 09.
 2. The District Collector and District Magistrate,
O/o. Collectorate Office, Salem District.
 3. The Additional Secretary,
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,
Salem District, Salem.
 5. The Inspector of Police,
The Civil Supplies CID, Salem Unit,
Salem.
 6. The Superintendent,
Salem Central Jail,
Salem.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the records relating to the detention order passed in C.M.P.No.01/PBMMSEC Act/2020 (C2) dated 07.09.2020 passed by the 2nd respondent under Section 3(1) r/w 3(2)(a) of the Prevention

of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) and set aside the same and direct the respondent to produce the petitioner's husband Saravanan, S/o.Chinnathambi, aged about 43 years the detenu, now confined in Central Prison, Salem before this Court and set the petitioner's husband Saravanan, S/o. Chinnathambi, aged about 43 years, the detenu herein at liberty.

For Petitioner : Mr.K.Thenrajan
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 father of the detenu, Saravanan, S/o.Chinnathambi, aged about 43 years. The detenu has been detained by the second respondent by his order in C.M.P.No.01/PBMMSEC Act/2020 (C2) dated 07.09.2020 holding him to be a "Black Marketeer", as contemplated under the Central Act No.7 of 1980 of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 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 07.09.2020. The petitioner made a representation on 21.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 26.09.2020. The remarks were duly received on 03.10.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 13.10.2020.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 03.10.2020 and there was a delay of 10 days in considering the representation by the Hon'ble Minister of Food and Civil Supplies after the Law Secretary dealt with it, of which 4 days were Government Holidays, hence, there was 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. सत्यमेव जयते

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 5 days in submitting the remarks by the Detaining Authority and unexplained delay of 6 days in considering the representation by the Hon'ble Minister of Food and Civil Supplies. 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 C.M.P.No.01/PBMMSEC Act/2020 (C2) dated 07.09.2020, passed by the second respondent is set aside. The detenu, namely, Saravanan, S/o.Chinnathambi, aged about 43 years, is directed to be released forthwith unless his detention

is required in connection with any other case.

Sd/-
Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary,
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Fort St.George, Chennai - 09.
- 2.The District Collector and District Magistrate,
O/o. Collectorate Office,
Salem District.
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- 6.The Superintendent,
Salem Central Jail,
Salem.
- 7.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1668 of 2020

CO(SRA)
BDL/06/01/2021