

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

Coram

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

H.C.P. No. 1892 of 2020

S.Ganesan

..Petitioner

.Vs.

- 1.Government of Tamilnadu rep. By its
Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St.George,
Chennai -600009
- 2.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.
- 3.Commissioner of Police,
Greater Chennai, Chennai
- 4.Director General of Police,
Tamilnadu, Chennai-600004.
- 5.Superintendent of Central Prison,
Puzhal, Chennai -600066.
- 6.Inspector of Police,
CS CID, Chennai Unit,
Chennai.

..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus against the detention order in memo No.13/Black Marketing Act/2020 dated 28.09.2020 on the file of the 2nd respondent herein and SETASIDE the same and direct the respondents here in produce the body of the petitioners cousin brother Thiru Thanga Ganesan, S/o.Periyasamy, aged about 39 years, who is confined at Central Prison, Puzhal, Chennai before this court and set him at liberty.

For Petitioner : M/s. R.Subadra Devi
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 cousin brother of the detenu, Thanga Ganesan, S/o. Periyasamy, aged about 39 years,. The detenu has been detained by the third respondent by his order in No.13/2020 dated 28.09.2020 holding him to be a "Black Marketeer", as contemplated under Sub Section 3 (2) (b) read with 3(1) of the 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 28.09.2020. The petitioner made a representation on 02.10.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.10.2020. The remarks were duly received on 23.10.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 31.10.2020.

6. It is the contention of the petitioner that there was a delay of 9 days in submitting the remarks by the Detaining

Authority, of which 1 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 23.10.2020 and there was a delay of 8 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 2 days were Government Holidays, hence, there was inordinate delay of 14 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 14 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise 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 No.13/2020 dated 28.09.2020, passed by the second respondent is set aside. The detenu, namely, Thanga Ganesan, S/o. Periyasamy, aged about 39 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

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6. Inspector of Police,
CS CID, Chennai Unit,
Chennai.

7. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1892 of 2020

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