

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

Coram

THE HON'BLE MR. JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.2057 of 2020

Hajamma

.. Petitioner

Vs.

- 1.The Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumers Affairs),
No.271, Krishi Bhaavan,
New Delhi - 110 001.
- 2.The Secretary to Government,
Food and Consumer Protection Department,
Second Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai - 9.
- 3.The District Collector and the
District Magistrate,
Kallakurichi District.
- 4.The Superintendent of Police
Kallakurichi District.
- 5.The Superintendent of Prison,
Central Prison,
Cuddalore.
- 6.The Inspector of Police,
Civil Supply CID,
Villupuram Unit,
Villupuram.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the

records in D.O.No.C2/14/2020 dated 17.10.2020 on the file of the third respondent herein and quash the same as illegal and consequently direct the respondents to produce petitioner's husband Rafik @ Ibrahim Sugarna S/o.Basheer Ahamed, aged about 43 years, who now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.M.Selvam

For Respondents : Mr.R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the wife of the detenu, Rafik @ Ibrahim Sugarna S/o.Basheer Ahamed, aged about 43 years. The detenu has been detained by the third respondent by his order dated 17.10.2020 in D.O.No.C2/14/2020, holding him to be a "Black Marketeer", as contemplated under the provisions 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. He also filed his counter affidavit.

5. The Detention Order in question was passed on 17.10.2020. The petitioner made a representation on 23.10.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 31.10.2020. The remarks were duly received on 09.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.11.2020.

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 4 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 09.11.2020 and there was a delay of 9 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 7 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 5 days in submitting the remarks by the Detaining Authority and unexplained delay of 7 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 D.O.No.C2/14/2020 dated 17.10.2020, passed by the third respondent is set aside. The detenu, viz., Rafik @ Ibrahim Sugarna S/o.Basheer Ahamed, aged about 43

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

nsd
To

- 1.The Secretary to Government,
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Food and Public Distribution,
(Department of Consumers Affairs),
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Cuddalore.
- 6.The Inspector of Police,
Civil Supply CID,
Villupuram Unit,
Villupuram.
- 7.The Public Prosecutor,
High Court, Madras.
- 8.The Joint Secretary to Government,
Public (Law & Order)
Fort.St.George,
Chennai-600 009

PA(CO)
SM/04/03/2021

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