

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2513 of 2020

Venkatesan,  
F/o.Rajesh

... Petitioner /  
Father of the detenu

versus

- 1.The Additional Secretary to  
Government of India,  
Ministry of Consumer Affairs,  
Food and Public Distribution,  
Room No.270, Krishi Bhavan,  
New Delhi - 110 001.
- 2.The Secretary,  
Co-operation,  
Food and Consumer Production Department,  
Namakkal Kavignar Maaligai,  
Chennai - 600 009.
- 3.The District Magistrate and District Collector,  
Office of the District Collector Office,  
Salem District.
- 4.The Commissioner of Police,  
Office of the Commissioner of Police,  
Salem City District.
- 5.The Superintendent of Prison,  
Office of the Salem Central Prison,  
Salem District.
- 6.The State Rep. by;  
The Inspector of Police,  
Civil Supplies CID,  
Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order in C.M.P.No.03/PBMMSEC Act/2020/(C2) dated 23.11.2020 on the file of the third respondent and quash the same and direct the respondents to produce the body and person of the petitioner's son namely, Rajesh, S/o.Venkatesan, aged about 41 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.A.Raja Mohamed  
For Respondents : Mr.R.Prathap Kumar  
Additional Public Prosecutor

O R D E R

[Order of the Court was made by R.PONGIAPPAN, J.]

The petitioner is the father of the detenu, Rajesh, aged about 41 years. The detenu has been detained by the third respondent by its order dated 23.11.2020 in C.M.P.No.03/PBMMSEC Act/2020/(C2), holding him to be a "Black Marketeer", as contemplated under 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 23.11.2020. The petitioner made a representation on 06.12.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.12.2020. The remarks were duly received on 19.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 08.01.2021.

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 19.12.2020 and there was a delay of 17 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 6 days were Government Holidays, hence, there was inordinate delay of 11 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 11 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 C.M.P.No.03/PBMMSEC Act/2020/(C2) dated 23.11.2020, passed by the third respondent is set aside. The detenu, viz. Rajesh, son of Venkatesan, aged about 41 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-  
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Additional Secretary to  
Government of India,  
Ministry of Consumer Affairs,  
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Room No.270, Krishi Bhavan,  
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2.The Secretary,  
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5.The Superintendent of Prison,  
Office of the Salem Central Prison,  
Salem District.

6.The State Rep. by;  
The Inspector of Police,  
Civil Supplies CID,  
Salem District.

7.The Joint Secretary to Government of Tamil Nadu,  
Public, Law and Order Department,  
Secretariat, Chennai - 9.

8.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.A.Raja Mohamed, Advocate SR.No. 23498

H.C.P.No.2513 of 2020

A.SK(05.07.2021)

सत्यमेव जयते

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