

Faritha Banu Vs. the Additional Secretary

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Court : Chennai

Decided On : Oct-20-2011

Judge : M.Jaichandren; V.Periya Karuppiyah, Jj.

Acts : [Constitution of India](#) - Article 21

Appeal No. : H.C.P(MD)No.646 of 2011

Appellant : Faritha Banu

Respondent : The Additional Secretary

Judgement :

1. This Habeas Corpus Petition has been filed by the wife of the detenu seeking for a direction, directing the respondents herein to produce the detenu Abuthahir, S/o.Mohammed Sherif, aged about 36 years, who has been termed as Black Marketeer, now confined in Central Prison, Madurai and call for records pertaining to the order of detention in 01/2011(CS) dated 24.07.2011 passed by the 3rd respondent herein and quash the same and set the detenu at liberty.

2.We have heard Mr.T.Lenin Kumar, learned Counsel appearing for the petitioner and Mr.A.Uthaman, learned Senior standing counsel for the 1st respondent and Mr.A.Muthukaruppan, learned Additional Public Prosecutor appearing for the respondents 2 to 4.

3.The learned Counsel for the petitioner would submit in his argument that the impugned order of detention, passed under Act 7 of 1980, terming the detenu Abuthahir as Black Marketeer is not sustainable. He would further submit that the detaining authority has failed to see the real causes for detaining the detenu under the said Act. He would vehemently stress in his argument that the representation, given by the petitioner on 26.07.2011, was received by the Government on 01.08.2011 and remarks was called for on 04.08.2011 and despite 4 days holidays during the said period, the remarks could be received only on 16.08.2011, in which, 8 days delay had been caused in considering the representation. He would also submit that the rejection of the representation was sent to the detenu on 30.08.2011 and the same could be served on the detenu only on 06.09.2011. He would further submit in his argument that this delay would certainly vitiate the detention order since it has not been explained in the counter. He would also refer to a judgment of this Court in Sumaiya Vs. the Secretary to Government, Prohibition & Excise Department, Government of Tamil Nadu, Fort.St.George, Chennai-9 and another reported in 2007(2)MWN(Cr.)145(DB) that even a three days delay in considering the representation is fatal to the detention order passed. He would further submit that the unexplained delay caused in considering the representation would vitiate the detention order and several judgments of this Court have categorically laid down to that effect and therefore, the detention order, passed by the detaining authority, has no legs to stand. He would further submit that the detenu is now put in the jail under the guise of detention order which is illegal and hence, the petition filed by the wife of the detenu may be allowed and the detention order may be quashed and the detenu may be set at liberty.

4.The learned Additional Public Prosecutor appearing for the respondents 2 to 4 would submit in his argument that no doubt there is a delay in considering the representation given to the Government and such delay has been explained in the counter. He would further submit that the detention authority has come to the conclusion that the detenue is a black marketeer, on the basis of the ground case. He would also submit that the alleged delay caused in considering the representation will not be fatal since the delay caused in considering the representation of the petitioner is purely an administrative delay and therefore, it

would not vitiate the detention order. Therefore, he would request the Court to reject the plea of the petitioner and dismiss the petition.

5. We have anxiously considered the arguments advanced on either side.

6. The main reason stated by the detaining authority for ordering the detention order was that the detenu had been dealing in Kerosene, which is an Essential Commodity and he sold Kerosene against the provisions of the Act and he would be branded as 'Black Marketeer' as per the definition of Essential Commodities Act, 1955. The detenu took the kerosene for disposal at a higher price in Black Market in order to make gain, which also defeated the provisions of Section 17 of Tamil Nadu Kerosene (Regulation of Trade) order 1973 and Essential Commodities Act, 1955 and his activities are prejudicial to the maintenance of supplies of commodities essential to the community and the normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities. Further, the detention authority has also apprehended that a bail petition has been filed before the learned Judicial Magistrate, Uthamapalayam in Cr.M.P.No.10895 of 2011 dated 20.07.2011 and it is pending before the said Court and therefore, there is a chance for him to come out of bail.

7. Even though the reasons stated for by the detention authority are relevant to some extent, there is no adverse case pending against the detenu.

8. As regards the delay put forth by the learned Counsel for the petitioner, we can see that the proforma submitted by the learned Additional Public Prosecutor would show that the remarks on the representation was called for on 04.08.2011, but, it was received only on 16.08.2011. Admittedly, there is a delay of 12 days and after deducting 4 weekly holidays, the actual delay is 8 week days. Apart from that, the rejection letter has been served upon the detenu only after a period of 7 days.

9. Will these delays make the detention order vitiate, is the question to be decided.

10. In the said circumstances, the judgment of this Court in Sumaiya Vs The Secretary to Government, Prohibition & Excise Department, Government of Tamil Nadu, Fort.St.George, Chennai-9 and another reported in

2007(2)MWN(Cr.)145(DB) is squarely applicable to the present case. The said delay of 8 + 7 days in considering the representation has not been explained by the respondents. The relevant passage in the above cited judgment following the principle laid down by the Honourable Apex Court in K.M. Abdulla Kunhi -v- Union of India reported in 1991(1) SCC 476 would be thus:

8.That part, it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal vide K.M. Abdulla Kunhi -v- Union of India reported in 1991(1) SCC 476.

11.In the said case, this Court has considered three days delay in considering the representation was unexplained and the detention order was quashed. A Similar view has been taken by this Court in yet another judgment in Venkatesan @ Maya Venkatesan reported in (2007) 1 MLJ (Cr)1176 which is as follows:

10...Thus it is clear that the Government is bound to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. The test is not the duration or range of delay, but how it is explained by the Authority concerned. In this case, as pointed out above, there is absolutely no explanation for the delay of four days. It is a constitutional obligation to consider the representation forwarded by the detenu without any delay, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Hence, on this ground also the order of detention is liable to be quashed.

12.Applying the principles laid down in the aforesaid judgment of this Court and the principle laid down by the Honourable Apex Court in K.M. Abdulla Kunhi -v- Union of India reported in 1991(1) SCC 476, we are of the firm view that the delay in considering the representation made by the petitioner to an extent of 8 + 7 days is still unexplained and in our considered opinion, it vitiates the impugned order of detention. Therefore, we are inclined to allow the petition by quashing the impugned order of detention dated 24.07.2011 passed by the 3rd respondent.

13. Accordingly, the order of detention, passed against the detenu Abuthahir, is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

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