

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9265 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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JAYANTILAL SUNDERJI MODI

Versus

STATE OF GUJARAT  
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Appearance:

MR Y N Oza for Mr BP GUPTA for Petitioner  
Mr S K Patel, for Respondent No. 1, 2 & 3  
Mrs P J Davawala for respondent no.4  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/09/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under  
Article 226 read with Articles 14, 19 21 and 22 of the  
Constitution of India challenging the order of detention

dated 26.7.2000 passed by the learned District Magistrate, Jamnagar in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. Rule was issued in this matter and in response to the service of rule, Mr S K Patel, learned AGP appeared for respondents No.1,2, and 3. Affidavit of Mr P R Shukla, Dy.Secretary to the Government of Gujarat Food, Civil Supplies and Consumer Affairs Department, Gandhinagar has been filed. Ms. P J Davawala, learned Addl.Standing Counsel appeared for respondent no.4-Union of India. Learned Advocate for the petitioner has contended that the petitioner had submitted a representation on 16.8.2000 to the detaining authority as well as to the State. That there was inordinate and unexplained delay in disposal of the said representation and, therefore, the further detention of the petitioner is illegal. In reply to the said argument, the respondents have submitted affidavit of Mr P R Shukla as stated above. Para 5 of the said affidavit shows that the representation dated 16.8.2000 was submitted to the jail authority on 16.8.2000 itself by the detenu. That the jail authority had forwarded the said representation to the concerned authorities vide letter dated 16.8.2000 i.e. on the same day. That the Food, Civil Supplies and Consumer Affairs Department received the said representation on 18.8.2000. That the file was prepared and placed before the Under Secretary and Dy.Secretary on 18.8.2000. That thereafter, the same was placed before the Hon'ble Minister for Civil Supplies. That he took decision on 18.8.2000 and the file was received back by the Branch on 28.8.2000 at 6 p.m. That on 29.8.2000, the detenu was informed about rejection of the representation through jail authority.

4. Therefore, it is clear that the representation was submitted on 16.8.2000 and the decision is said to have been taken on 19.8.2000. However, the file was there with the concerned Minister upto 28.8.2000 and it was received by the Branch only at 6 p.m. on 28.8.2000. This shows that there was inordinate and unexplained delay for a period of nearly 8 days. On this aspect of the case, learned Advocate for the petitioner has relied upon a decision of the Apex Court in the case of Rajammal v. State of Tamil Nadu, reported in AIR 1999 SC 684. There there was unexplained delay of 5 days in considering and disposing of the representation of the detenu. There the Supreme Court has observed that mere absence of the Minister at Headquarters is not sufficient

to justify the delay. This shows that the representation of the detenu is required to be disposed of expeditiously and in the present case, about 9 days have been lost in getting the matter decided. Simply because the matter is said to have been disposed of on 19.8.2000, it cannot be said to have been really disposed of on 19.8.2000 because the file was received by the Branch on 28.8.2000 i.e. after 9 days. One can understand delay of a day or two in transmission of file from one branch to another or from one office to another or one table to another. Here the concerned Minister is said to have decided the matter on 19.8.2000 and the file was received by the branch on 28.8,2000. There is no explanation as to the movement of the file during the span of nearly 8 days.

5. In this view of the matter, the aforesaid decision would clearly apply to the facts of the present case. Therefore, it has to be held that there was inordinate and unexplained delay of 8 days in disposing the representation of the petitioner. Almost a similar view was adopted in a decision in Special Civil Application No. 2106/2000 dated 27.4.2000 (Coram: A L Dave, J.). It is therefore, clear that there was inordinate and unexplained delay of 8 to 9 days in disposing the representation of the petitioner and hence the further detention of the petitioner cannot be sustained.

6. In view of the aforesaid, this petition is allowed. The impugned order of detention dated 26.7.2000 passed by District Magistrate, Jamnagar is quashed and set aside. The detenu is directed to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. No order as to costs.

29.9.2000 [D P Buch, J.]  
msp.