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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**  
**and**

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

**H.C.P(MD)No.1037 of 2015**

Thilagavathy

.. Petitioner

Vs.

1. The Additional Secretary,  
Government of India,  
Ministry of Consumer Affairs, Food and  
Public Distribution (Department of Consumer Affairs),  
Room No.270, Krishi Bhavan, New Delhi 110 001.
2. The Secretary,  
Government of Tamil Nadu,  
Co-operation, Food and Consumer Protection Department,  
Secretariat, Chennai - 9.
3. The District Collector and District Magistrate,  
Tiruchirappalli District, Tiruchirappalli.
4. The Inspector of Police,  
C.S.C.I.D., Tiruchirappalli.

.. Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records, pertaining to the Order of Detention passed by the third respondent in his proceedings P.B.M.M.S.E.C.Act/C.M.P.No.03 of 2015 dated 26.06.2015 and quash the same illegal and produce the detenu namely Mohandoss, S/o.Adaikan, aged about 36 years, now he is confined in Central Prison, Trichy.

|                |                                                                  |
|----------------|------------------------------------------------------------------|
| For Petitioner | : Mr.T.Lenin Kumar, Advocate                                     |
| For R-1        | : Mr.V.Srikumaran Nair<br>Central Government<br>Standing Counsel |
| For R-2 to R-4 | : Mr. T.Mohan<br>Additional Public Prosecutor                    |

**ORDER**

[Order of the Court was made by **V.S.RAVI, J**]

The petitioner is the wife of one Mohandoss. The detenu has been detained as per the order of the 3<sup>rd</sup> respondent under Section 3 (1) r/w 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7/1980), branding him as "**Black Marketeer**".



2. We have heard the learned counsel for the petitioner and the learned Central Government Standing Counsel for the first respondent and the learned Additional Public Prosecutor for the respondent Nos.2 to 4 and we have also perused the records carefully.

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3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. But, the learned Central Government Standing Counsel would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 26.06.2015. As against the same, the petitioner made a representation on 10.07.2015. The remarks were called for by the Government from the Detaining Authority on 15.07.2015. The remarks were received by the Detaining Authority on 23.07.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 05.08.2015. It is the contention of the petitioner that there was delay of six days on the part of the Detaining authority in considering the representation.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further 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 of the detenu.

9. 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/detenu would be sufficient to set aside the detention order.



10. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of six working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the 3<sup>rd</sup> respondent, in his Detention Order No.P.B.M.M.S.E.C.Act/C.M.P.No.03 of 2015 dated 26.06.2015 is quashed. The detenu, by name, Mohandoss, S/o.Adaikan, aged about 36 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To:

1. The Additional Secretary,  
Government of India,  
Ministry of Consumer Affairs, Food and  
Public Distribution (Department of Consumer Affairs),  
Room No.270, Krishi Bhavan, New Delhi 110 001.
2. The Secretary,  
Government of Tamil Nadu,  
Co-operation, Food and Consumer Protection Department,  
Secretariat, Chennai - 9.
3. The District Collector and District Magistrate,  
Tiruchirappalli District, Tiruchirappalli.
4. The Secretary to Government,  
Home and Prohibition and Excise Department,  
Secretariat, Chennai - 9.
5. The Inspector of Police, C.S.C.I.D., Tiruchirappalli.
6. The Superintendent, Central Prison, Tiruchirappalli.  
(In Duplicate for communication to the detenu)
7. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.T.Leninkumar, Advocate Sr.No.54956

akm/22.09.15 /3p-10c/