



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1207 of 2015

J.Sajjela

..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,
Complaint-Operation,
Food and Consumer Protection Department,
Secretariat, Fort St.George,
Chennai - 600 009.

3.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.

4.The Inspector of Police,
CSCID, Tirunelveli,
Tirunelveli district.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas corpus or any other appropriate writ order or direction in the nature of a writ of Habeas corpus directing the respondents to produce the person or the body of detenu namely Jawakarkhan @ Jafarkhan S/o.Nazar, aged about 28 years before this Court who is now detained in Central Prison, Palayamkottai in pursuant to the detention order passed by the third respondent by his proceedings in MHS Confdl.No.76 of 2015 dated 17.07.2015 and call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner	:	Mr.C.Muthusaravanan
For RR - 2 to 4	:	Mr.A.Ramar, Additional Public Prosecutor
For R - 1	:	Mr.P.Paul Pandian Sr.Central Govt.Panel counsel

O R D E R

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

The petitioner is the wife of the detenu viz., Jawakarkhan @ Jafarkhan S/o.Nazar, aged about 28 years. The detenu has been detained, as per the order of the third respondent under Sections 3(2)(a) r/w 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of



Essential Commodities Act, 1980, branding him as "Black Marketeer". Challenging the same, she has come up with this petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

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. The learned Additional Public Prosecutor 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 17.07.2015. As against the same, the petitioner made a representation on 03.08.2015. The remarks were called for by the Government from the Detaining Authority on 04.08.2015. The remarks were received on 10.08.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 20.08.2015. It is the contention of the petitioner that there was delay of four days in submitting the remarks by the Detaining Authority and there was delay of three days on the part of the Government in considering the same.

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 seven working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, dated 17.07.2015, made in MHS Confdl. No.76 of 2015, by the third respondent / District Collector and District Magistrate, Tirunelveli District and directs the release of the detenu by name Jawakarkhan @ Jafarkhan S/o.Nazar, aged about 28 years forthwith, if his continued custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(W)

/True copy/

Sub Assistant Registrar(CS)

Madurai Bench of Madras High Court,
Madurai.

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,
Complaint-Operation, Food and Consumer Protection Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 3.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 4.The Inspector of Police, CSCID, Tirunelveli,
Tirunelveli district.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Secretariat, Chennai-9.
- 6.The Superintendent, Central Prison,
Palayamkottai.
(In duplicate for communicate to the detenu)
- 7.The Commission of Police, Tirunelveli District.
- 8.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.P.Paul Pandi, Advocate in SR.No.66427

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