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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.08.2015

CORAM:
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.440 of 2015

M.Jeyanthi

.. Petitioner

Vs.

1.The Secretary to Government,
Government of India,
Food and Consumer Protection
Department,Room No.270, Krishi Bhavan,
New Delhi-110001.

2.The Additional Secretary,
Government of India,
Department of Consumer Affairs,
Food and Public Distribution
(Department of Consumers Affairs)
Room No.270, Krishi Bhavan,
New Delhi-110001.

3.The Secretary to Government,
Cooperation, Food and Consumer
Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai-600 009.

4.The District Collector/District Magistrate,
Collectorate,Kanyakumari District at Nagercoil.

5.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order in P.D.No.8/2015 dated 27.2.2015 passed by the Respondent No.4 and quash the detention order and produce the body of the petitioner's husband namely N.Kanagaraaj (42/15), S/o.Nesamani now confined at Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty forthwith.

For petitioner
For respondents

: Mr.S.Rajasekar
: Mr. T.Mohan
Additional Public Prosecutor
for RR3 to 5.
Mr.R.Nandakumar
Senior Panel Counsel for
Central Government for
RR 1 and 2.



O R D E R

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

The husband of the petitioner has been detained as "Black Marketeer" as per the order of the fourth respondent in P.D. No.8/2015 dated 27.2.2015 under Section 3(2)(a) r/w 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). Challenging the said order, the petitioner is now before this Court with this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and Senior Panel Counsel for Central Government 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.

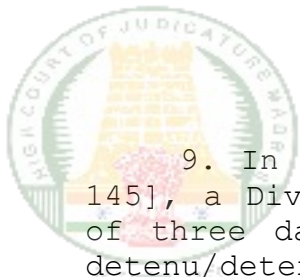
4. But, the learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has 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 27.2.2015. As against the same, the petitioner made a representation on 10.3.2015. The remarks were called for by the Government from the Detaining Authority on 20.03.2015. The remarks were received by the Detaining Authority on 06.04.2015. It is the contention of the petitioner that there was delay of nine days in submitting the remarks by the Detaining Authority and there was delay of ten days on the part of the Government in sending letter to the detenu.

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.

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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 nineteen 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 fourth respondent, in his proceedings in P.D.No.8/2015 dated 27.2.2015, is quashed. The detenu, by name, N.Kanagaraj, husband of M.Jeyanthi, aged about 42 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(co)

/True Copy/

Sub Assistant Registrar

vks

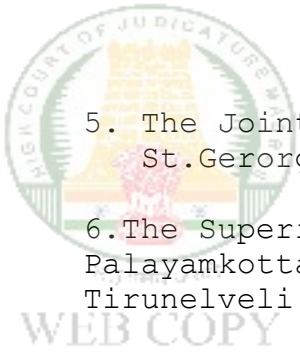
To:

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4.The District Collector/District Magistrate,Collectorate,
Nagercoil.



5. The Joint Secretary to Govt.of Tamilnadu, Public(Law&Order)Deputy
St.Gerorge, Chennai-9

6.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli District.

7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to MR.T.LAJAPATHI ROY,Advocate Sr.No 45378

+1cc to MR.R.NANDAKUMAR,Advocate Sr.No 45079

JAM/MPA-DP/SAR-II/2.9.15/4P-10C

ORDER MADE IN
H.C.P (MD) No. 440 of 2015
10.08.2015