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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.09.2015

CORAM:

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

and

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

H.C.P (MD) No. 751 of 2015

A.KALIYAMMAL

... PETITIONER

Vs.

- 1 THE SECRETARY TO GOVERNMENT,
GOVERNMENT OF INDIA,
FOOD AND CONSUMER PRODUCTION DEPARTMENT,
ROOM NO. 270, KRISHI BHAVAN
NEW DELHI - 110001.
- 2 THE ADDITIONAL SECRETARY,
GOVT OF INDIA, DEPT. OF CONSUMER AFFAIRS,
FOOD AND PUBLIC DISTRIBUTION (DEPT OF
CONSUMERS AFFAIRS),
ROOM NO. 270 KRISHI BHAVAN,
NEW DELHI - 110001.
- 3 THE SECRETARY TO GOVERNMENT,
CO-OPERATION FOOD AND CONSUMER PRODUCTION
DEPARTMENT, 2ND FLOOR,
NAMAKKAL KAVIGNAR MAALIGAI,
SECRETARIAT, CHENNAI - 600 009.
- 4 THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE,
COLLECTORATE,
MADURAI DISTRICT, MADURAI.
- 5 THE SUPERINTENDENT OF CENTRAL PRISON,
MADURAI CENTRAL PRISON,
MADURAI.

... **RESPONDENTS**

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the the entire records connected with the detention order in C.M.P.No.04/2015 (ku.po), dated 10.05.2015, passed by the respondent No.4 and quash the detention order and produce the petitioner's son namely A.Mahalingamoorthy, aged 45 years, S/o.Arumugam, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.



For Petitioner : Mr.T.Lajapathi Roy
For RR 1 & 3 : Mr.S.Muthukumar
Central Government Standing Counsel

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For RR 4 and 5 : Mr.T.Mohan
Additional Public Prosecutor.

O R D E R

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

The petitioner is the mother of the detenu. The detenu has been detained as per the order of the fourth respondent under Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980), branding him as "**Black Marketer**".

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and 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 10.05.2015. As against the same, the petitioner made a representation on 21.05.2015. The remarks were called for by the Government. From the Detaining Authority on 25.05.2015. The remarks were received on 28.05.2015. Thereafter, the Government considered



the issue and passed the order rejecting the representation on 03.06.2015. It is the contention of the petitioner that there was delay of more than three days in considering the representation made by the petitioner.

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/detenue 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 more than three 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 second respondent, in his Proceedings in C.M.P.No.04/2015(Ku.Po), dated 10/05/2015, is quashed. The detenu, by name, A.Mahalingamoorthy, aged 45 years, S/o.Arumugam, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Record)

/True copy/



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GOVERNMENT OF INDIA,
FOOD AND CONSUMER PRODUCTION DEPARTMENT,
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4. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE,
COLLECTORATE,
MADURAI DISTRICT, MADURAI.
5. THE SUPERINTENDENT OF CENTRAL PRISON,
MADURAI CENTRAL PRISON, MADURAI.
(In duplicate for Communicate the Detenu)
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
7. The Joint Secretary to Government,
Public Law & Order Department,
Fort St George, Chennai-600 009.

+1cc to Mr.T.Lajapathi Roy, Advocate SR No.52162

ORDER MADE IN
H.C.P (MD) No.751 of 2015
07.09.2015

RG.07/09/2015/AAL/MPA/SAR-II 4P/10C.