

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 04.08.2017****CORAM:**

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P. (MD) No.678 of 2017

WEB COPY

Kumar

... Petitioner

-vs-

1. The Secretary to Government,
Department of Co-operation,
Food and Consumer Protection Department,
Secretariat, Chennai-600009.

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

3. The Additional Secretary to Government of India,
Department of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi-110 001.

4. The Superintendent of Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in MHS Confdl No.47 of 2017 dated 22.04.2017 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Kumar, aged about 38 years, S/o.Muthusamy, now detained in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For R1 ,R2 and R4 : Mr.C.Ramesh

Additional Public Prosecutor

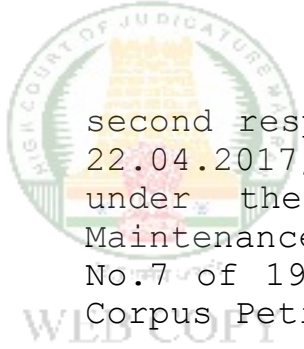
For R3 : Mr.Nandha Kumar, CGSC

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

<https://hcservices.ecourts.gov.in/hcservices/>

The petitioner is the detenu, namely, Kumar, Son of Muthusamy, male, aged about 38 years. The detenu has been detained by the



second respondent by his order in MHS Confdl No.47 of 2017, dated 22.04.2017, holding him to be a "Black Marketeer", as contemplated under the provisions of Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, 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. The Detention Order in question was passed on 22.04.2017. The petitioner made a representation, dated 05.05.2017, and the same was received on 08.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.05.2017. The remarks were duly received on 16.05.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.05.2017.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. Thereafter, there was another delay of Nil day in considering the representation.

7. In **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**, the Honourable Supreme Court has 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 undertaken by the detenu.



8. In **Sumaiya vs. The Secretary to Government**, reported in **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 would be sufficient to set aside the order of detention.

9. In **Tara Chand vs. State of Rajasthan and others**, reported in **1980 (2) SCC 321**, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 15 days in submitting the remarks by the Detaining Authority and 19 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in MHS Confdl No.47 of 2017, dated 22.04.2017, passed by the second respondent is set aside. The detenu, namely Kumar, Son of Muthusamy, male, aged about 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To:

1. The Secretary to Government,
Department of Co-operation,
Food and Consumer Protection Department,
Secretariat, Chennai-600009.
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Additional Secretary to Government of India,
Department of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi-110 001.
4. The Superintendent of Prison,
Palayamkottai,
Tirunelveli District.



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

6. The Joint Secretary to Government
Public (Law & Order),
Fort.St.George, Chennai-9.

SMI/AM

PSM/KP/SAR1/23.08.2017/4P/7C

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