



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.710 of 2017

Kanagaraj
S/o.Nesamani,
Thatchanvilai Veedu,
Medhukummal Post, Medhukummal Village,
Vilavancode Taluk,
Kanniyakumari District,
Now confined at Central Prison,
Palayamkottai,
Tirunelveli District. ... Petitioner

-vs-

- 1.The Secretary to Government,
Department of Co-operation
Food and Consumer Protection Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
- 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, calling for the entire records connected with the detention order passed in P.D.No.37 of 2017 dated 05.05.2017 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Kanagaraj, aged about 44 years, S/o.Nesamani, now detained in Central Prison, Palayamkottai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

<https://hcservices.ecourts.gov.in/hcservices/R2 & R4>

: Mr.C.Ramesh

Additional Public Prosecutor

For R3

: Mr.P.Paulpandi

O R D E R

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

The petitioner is the detenu, namely, Kanagaraj, Son of Nesamani, male, aged about 44 years. The detenu has been detained by the second respondent by his order in P.D.No.37/2017, dated 05.05.2017, 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 (Central Act 7 of 1980). The said order is under challenge in this Habeas Corpus Petition.

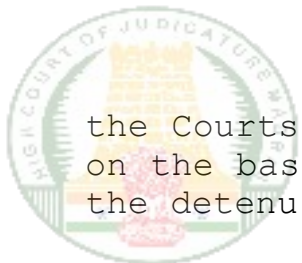
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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 05.05.2017. The petitioner made a representation, dated 12.05.2017 and the same was received on 16.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.05.2017. The remarks were duly received on 02.06.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.06.2017.

6. It is the contention of the petitioner that there was a delay of 17 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays and hence there was an inordinate delay of 13 days in submitting the remarks.



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 13 days in submitting the remarks by the Detaining Authority. 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 P.D.No.37/2017, dated 05.05.2017, passed by the second respondent is set aside. The detenu, namely, Kanagaraj, son of Nesamani, Male, aged about 44 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Secretary to Government,
Department of Co-operation
Food and Consumer Protection Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.
- 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 and Order) Department,
Fort Saint George, Chennai-600 009