

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 1398 of 2020

Malathi

... Petitioner

Vs.

- 1.The Principal Secretary to the Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maaligai,
Secretariat, Chennai - 600 009.
- 2.The Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi -110 001.
- 3.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 07.
- 4.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai - 66.
- 5.The Inspector of Police,
Civil Supplies, CID,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus directing the respondents to produce the body of the detenu Velusamy @ Velu, male, aged 43 years, S/o. Murugesan, who is detained at Central Prison, Puzhal, Chennai before this Court and pass an order to call for the records of detention order passed by the third respondent dated 27.07.2020 in Memo No.09/Black Marketing Act/2020 against the petitioner's husband Velusamy @ Velu, male, aged 43 years, S/o. Murugesan, and set aside the same and set the detenu at liberty.

For Petitioner : Mr.R.Rafi Babu

For Respondents Mr.R.Prathap Kumar,
: Addl. Public Prosecutor
for R1,R3 to R5

ORDER

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

The petitioner is the wife of Velusamy @ Velu, male, aged 43 years, S/o. Murugesan. The detenu has been detained by the third respondent by his order in Memo No.09/Black Marketing Act/2020, dated 27.07.2020, holding him to be a "Black Marketeer", as contemplated under the provision of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980).

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing 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 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 27.07.2020. The petitioner made a representation on 09.08.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.08.2020. The remarks were duly received on 06.09.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.09.2020.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 5 days were Government Holidays and hence there was an inordinate delay of 15 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 06.09.2020 and there was a delay of 8 days in considering the representation by the Hon'ble Minister of Food and Civil Supplies after the Law Secretary dealt with it, of which 2 days were Government Holidays, hence, there was inordinate delay of 6 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (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* (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 unexplained delay of 6 days in considering the representation by the Hon'ble Minister of Food and Civil Supplies. The impugned detention order is, therefore, liable to be quashed.

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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.09/Black Marketing Act/2020, dated 27.07.2020, passed by the third respondent is set aside. The detenu, Velusamy @ Velu, male, aged 43 years, S/o. Murugesan, is directed to be released forthwith unless his detention is required in connection with any other case.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

mmi/ssm

To

- 1.The Principal Secretary to the Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maaligai,
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- 6.The Public Prosecutor,
High Court, Madras.

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VP[CO]
MK:19/12/2020