

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

H.C.P. NO. 1788 OF 2020

A.Baby

..Petitioner

Vs

- 1.State of Tamil Nadu,
Rep. By its Secretary to Government,
Food and Consumer Protection Department,
Secretariat, Chennai - 09.
- 2.The Magistrate and District Collector,
Tiruvallur District, Tiruvallur.
- 3.The Additional Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
- 4.The Superintendent of Police,
Tiruvallur District, Tiruvallur.
- 5.The Inspector of Police,
Civil Supplies CID, Tiruvallur Unit,
Tiruvallur District, Tiruvallur.
- 6.The Superintendent,
Central Prison, Puzhal, Chennai - 66.

..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the entire records connected with the order of the 2nd respondent herein in PBMMSECA No.01/2020, dated 05.09.2020 passed against the petitioner's husband the detenu namely Ashokan, son of Murugesan, aged about 37 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Kishore Kumar
For Respondents : Mr.R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu, Ashokan, son of Murugesan, aged about 37 years. The detenu has been detained by the second respondent by his order in PBMMSECA No.01/2020, dated 05.09.2020 holding him to be a "Black Marketeer", as contemplated under the Central Act No.7 of 1980 of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing 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 05.03.2020. The petitioner made a representation on 24.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.10.2020. The remarks were duly received on 23.10.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 31.10.2020.

6. It is the contention of the petitioner that there was a delay of 11 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 9 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 23.10.2020 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 9 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in PBMMSECA No.01/2020, dated 05.09.2020, passed by the second respondent is set aside. The detenu, namely, Ashokan, son of Murugesan, aged about 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Government,
Food and Consumer Protection Department,
Secretariat, Chennai - 09.
- 2.The Magistrate and District Collector,
Tiruvallur District, Tiruvallur.
- 3.The Additional Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
- 4.The Superintendent of Police,
Tiruvallur District, Tiruvallur.
- 5.The Inspector of Police,
Civil Supplies CID, Tiruvallur Unit,
Tiruvallur District, Tiruvallur.
- 6.The Superintendent,
Central Prison, Puzhal, Chennai - 66.
- 7.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1788 of 2020

RSV(CO)
KKV/07/01/2021

सत्यमेव जयते

WEB COPY