



WEB COPY

H.C.P.(MD) No.187 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.187 of 2020

Subbulakshmi

... Petitioner/wife of
the detenu

-VS-

- 1.The Additional Secretary,
Government of India,
Ministry of Consumer affairs, Food and Public
Distribution (Department of consumer affairs)
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
- 2.The Secretary,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat, Fort St.George,
Namakkal Kavignar Maligai,
Chennai - 600 009.
- 3.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
- 4.The Inspector of Police,
CSCID, Tirunelveli.
- 5.The Superintendent of Prison,
Central Prison, Palayamkottai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed by the third respondent in his proceedings No.2/BM/2020, dated 20.02.2020 and quash the same as illegal and produce the detenu, namely Mariappan, son of Balaiah Moopanar, aged about 62 years, now he is confined in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar

For R-1 : Mr.S.Jeyasingh
Central Government Standing Counsel



For R2 to R5

: Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

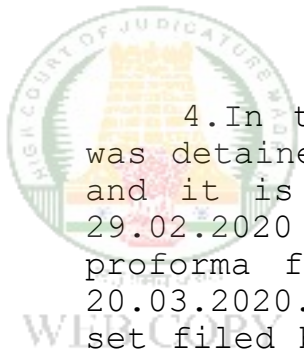
[Order of the Court was made by K.KALYANASUNDARAM, J.]

WEB COPY

Challenging the detention order of the third respondent dated 20.02.2020 passed in proceedings No.2/BM/2020, branding the detenu, namely, Mariappan, son of Balaiah Moopanar, aged about 62 years, as 'Black Marketer' as contemplated under Section 3(1) read with Section 3(2)(b) of the Central Act 7 of 1980, his wife has filed the Habeas Corpus Petition.

2.Mr.T.Lenin Kumar, learned counsel appearing for the petitioner would argue that the order of detention is liable to be set aside on two grounds. Firstly on the ground of non application of mind on the part of the detaining authority and secondly on the ground of delay in considering the representation of the petitioner. It is stated that in the ground case, the petitioner filed a bail petition in Cr.M.P.No.1540 of 2020 and the application was pending consideration before the Special Court, Tirunelveli. Though the bail petition has been enclosed at page No.779 of the booklet furnished by the third respondent, the second page of the bail petition is found missing, which shows the non appli of mind on the part of the detaining authority. He would further state that the petitioner made representation dated 29.02.2020 and it was received by the second respondent on 02.03.2020, but he chose to call for remarks from the detaining authority only on 20.03.2020, however, in the proforma circulated by the Additional Public Prosecutor, it has been wrongly stated as 20.03.2020 instead of 02.03.2020. In support of the above contention, the learned counsel for the petitioner has referred page No.21 of the typed set of papers, which shows that the rep of the petitioner was received by the second respondent on 02.03.2020.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the third respondent, would argue that the detention order has been passed against the husband of the petitioner considering his antecedents and only to prevent him from indulging in similar offence in future. It is stated that the detaining authority, on scrutinizing the materials placed by the sponsoring authority, has rightly passed the detention order and there is no illegality or irregularity warranting interference of this Court. It is further stated that the delay pointed out by the learned counsel for the petitioner caused no prejudice to the detenu and prayed for dismissal of this Habeas Corpus Petition.



4.In the matter on hand, it is not disputed that the detenu was detained by the order of the third respondent, dated 20.02.2020 and it is also not equally disputed that a representation dated 29.02.2020 was sent for revocation of the detention order. The proforma filed by the respondents shows that it was received on 20.03.2020. But, a perusal of the typed set and the additional typed set filed by the petitioner, would categorically establish that the representation dated 29.02.2020 was received by the second respondent on 02.03.2020. The proforma further indicates that the remarks were called for only on 20.03.2020 and it was received on 26.03.2020 and it came to be rejected on 07.04.2020. When this Court found that the representation was received on 02.03.2020, there is no explanation from the respondents for their inaction between 02.03.2020 and 20.03.2020 and for nearly 18 days, it was kept pending with the second respondent. It is settled legal position that the unexplained delay in considering the representation would vitiate the order of the detention. It is seen from the booklet that the bail petition filed in the ground case is running three pages, but the second page of the bail petition is found missing in the booklet, which shows the lack of mind on the part of the detaining authority.

5.For the forgoing reasons, we are of the opinion that the order of detention impugned in this Habeas Corpus Petition is liable to be quashed. Accordingly, the order of detention passed by the third respondent, in proceedings No.2/BM/2020, dated 20.02.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Mariappan, son of Balaiah Moopanar, male, aged 62 years, now he is confined in Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

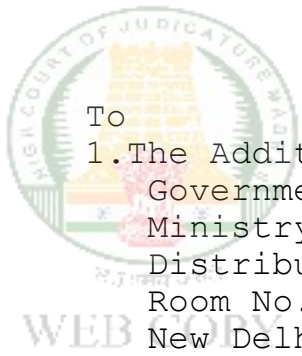
Sub Assistant Registrar(CS)

rj2

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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



To

- 1.The Additional Secretary,
Government of India,
Ministry of Consumer affairs, Food and Public
Distribution (Department of consumer affairs)
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
 - 2.The Secretary,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat, Fort St.George,
Namakkal Kavignar Maligai,
Chennai - 600 009.
 - 3.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
 - 4.The Inspector of Police,
CSCID, Tirunelveli.
 - 5.The Superintendent of Prison,
Central Prison, Palayamkottai.
 - 6.The Joint Secretary to Government,
Public(Law & Order),Fort.St George,Chennai-9.
 - 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to M/s.S. JEYASINGH, Advocate (SR-13353[F] dated 30/07/2020)

H.C.P. (MD) No.187 of 2020

29.07.2020

AP(13/08/2020) 4P 9C