



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.435 of 2020

Sabhana Begum

... Petitioner/Wife of the Detenue
-vs-

- 1.The Secretary to Government,
Cooperation, Food and Consumer Protection Department,
Secretariat,
Fort St.George,
Chennai - 600 009.
- 2.The Secretary to Government of India,
Food and Consumer Protection Department,
Ministry of Consumer Affairs,
Food and Public Distribution System,
Government of India,
New Delhi - 110 001.
- 3.The Additional Secretary,
Government of India,
Department of Consumer Affairs of Ministry of
Consumer Affairs,
Food and Public Distribution System,
Government of India,
R.No.270,Krishi Bhavan,
New Delhi.
- 4.The Commissioner of Police,
Office of the Commissioner of Police,
Trichy.
- 5.The Superintendent,
Central Prison,
Trichy.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order in No.C.B.O/PC/I.S/B.M/D.O.No.C1/2020, dated 19.6.2020 issued by the fourth respondent and quash the same and consequently direct the respondents to produce the body and person of her husband namely Sheikh Mohideen, son of Sharfudheen, aged about 33 years before this Court and set him at liberty within the time fixed by this Court.



For Petitioner : Mr.B.Jameel Arasu

For Respondents : Mr.V.Neelakandan
1,4 and 5 Additional Public Prosecutor

For Respondents : Mr.Rajaraman
2 and 3 Central Govt.Standing Counsel

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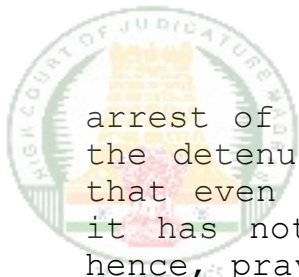
(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Sheikh Mohideen, son of Sharfudheen, aged about 33 years against the detention order passed by the fourth respondent, in C.B.O/PC/I.S/B.M/D.O.No.C1/2020, dated 19.6.2020 branding him as "Black Marketer" as contemplated under Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980).

2. It is submitted by Mr.B.Jameel Arasu, learned counsel for the petitioner that he has assailed the Detention Order on two grounds, firstly, the detention order is liable to be set aside on the ground that there was no intimation of arrest of the detenu either to his family members or his relatives. According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order. Further, the learned counsel for the petitioner would submit that the habeas corpus petitions in H.C.P. (MD) Nos.1201 & 1202 of 2019 filed by the co-accused in the ground case have been allowed and the detention orders passed against them have been quashed by this Court, vide order dated 12.02.2020, on the ground of non-intimation of arrest of the detenu either to his family members or his relatives.

3. Secondly, the learned counsel submitted that the detention order is liable to be set aside on the ground of delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India have not been followed in this case and there is unexplained and inordinate delay in disposal of the petitioner's representation, which would vitiate the impugned order of detention.

4. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents 1,4 and 5, while reiterating the counter affidavit filed by the second respondent, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. Furthermore, the intimation of



arrest of the detenu was given through SMS and hence, the rights of the detenu has not been affected in any manner. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

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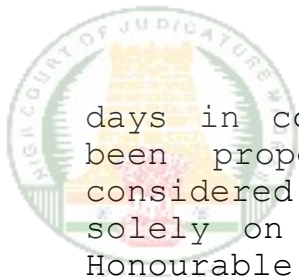
5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. A perusal of the arrest intimation form available at Page No.43 of the booklet shows that the arrest of the detenu in the ground case was intimated through SMS to the Cell No.8124807858. However, there is no material to show that the said Cell Number belongs to the family members of the detenu or his relatives and the text of the message is also not found place in the booklet. This Court, following the decision of the Honourable Apex Court in the case of ***D.K.Basu vs. State of West Bengal***, reported in ***AIR (1997) SC 610***, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order. Further, this Court has also quashed the detention orders passed against the co-accused in the ground case, by order dated 12.02.2020 in H.C.P.(MD) Nos.1201 & 1202 of 2019.

7. Further, in the instant case, the pro-forma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the fourth respondent on 25.06.2020 and it was received on 01.07.2020. Remarks were called for on 03.07.2020 and it was received on 06.07.2020. The Law Secretary dealt with the matter on 08.07.2020. The concerned Minister dealt with the matter on 14.07.2020 and the representation came to be rejected on 15.07.2020. It is seen that in between 08.07.2020 and 14.07.2020, there was a delay of 6 days, after excluding the Government Holidays of 2 days, there was a delay of 4 days in considering the petitioner's representation.

8. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of ***Rajammal vs. State of Tamil Nadu and another***, reported in ***1999 (1) SCC 417***, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

9. In the case on hand, as stated supra, the delay of 6



days in considering the representation of the petitioner has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside solely on the ground of delay by following the decision of the Honourable Apex Court referred supra.

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10. In the light of the above facts and circumstances, we are convinced that the impugned detention order would not stand to the scrutiny of this Court and the same is, therefore, liable to be set aside.

11. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the fourth respondent, in C.B.O/PC/I.S/B.M/D.O.No.C1/2020, dated 19.6.2020, is set aside. Consequently, the detenu, namely, Sheikh Mohideen, son of Sharfudheen, aged about 33 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

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.

To:

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2.The Secretary to Government of India,
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3.The Additional Secretary,
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5.The Superintendent,
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6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.435 of 2020
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(KG CO)
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