



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.597 of 2020

WEB COPY

Nasira Banu

... Petitioner/Wife of the detenu

-vs-

- 1.The Secretary to the Government,
Government of India,
Food and Consumer Protection Department,
Ministry of Consumer Affairs Food and
Public Distribution System,
New Delhi - 110 001.
- 2.The State, represented by
The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai-9.
- 3.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 4.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus directing the respondents to produce the detenu Ismail, son of Sulaiman, aged 39 years who has been termed as "Black Marketer" who is now confined in Central Prison, Trichy and to call for the records in C.No.B.M.02/Detention/C.P.O/TRC/2020, dated 29.7.2020 passed by the third respondent herein and to set aside the same and set the detenu at liberty.

For Petitioner

:Mr.T.Senthilkumar

For Respondent-1

:Mr.P.Paulpandi
Central Govt.Standing Counsel

For Respondents
2 to 4

:Mr.K.Dinesh Babhu
Additional Public Prosecutor



O R D E R

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

This habeas corpus petition has been filed by the wife of the detenu, namely, Ismail, son of Sulaiman, aged about 39 years, challenging the detention order in C.No.B.M.02/Detention/C.P.O/TRC/2020, dated 29.07.2020, passed by the third respondent, branding him as "Black Marketer" as contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7/1980).

2. Mr.T.Senthil Kumar, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the 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.

3. Mr.K.Dinesh Babhu, learned Additional Public Prosecutor, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. 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.

4. Heard both sides and perused the materials available on record.

5. In the instant case, the proforma furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the first respondent on 09.08.2020 and it was received on 17.08.2020. Remarks were called for on the same day i.e. 17.08.2020 and it was received on 20.08.2020. The Deputy Secretary dealt with the matter on 21.08.2020. The concerned Minister dealt with the matter on 03.09.2020 and the representation came to be rejected on 03.09.2020. It is seen that in between 26.08.2020 and 03.09.2020, there was a delay of 7 days, after excluding the Government Holidays of 2 days, there was a delay of 5 days in considering the petitioner's representation.

6. At this juncture, it is useful to refer the decision of the Apex Court in the case of **Rajammal vs. State of**

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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.

7. In the case on hand, as stated supra, the delay of 5 days in considering the representation of the petitioner remains unexplained 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.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in Detention Order in C.No.B.M.02/Detention/C.P.O/TRC/2020, dated 29.07.2020, passed by the third respondent, is set aside. Consequently, the detenu, namely, Ismail, son of Sualaiman, aged about 39 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.

Sd/-

Assistant Registrar (RECORDS)

// 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:

- 1.The Secretary to the Government,
Government of India,
Food and Consumer Protection Department,
Ministry of Consumer Affairs Food
and Public Distribution System,
New Delhi - 110 001.
- 2.The Secretary to Government,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai-9.
- 3.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 4.The Superintendent,
Central Prison,
Tiruchirappalli.
- 5.The Joint Secretary to Government,
Public(Law and Order)
Fort.St.George, Chennai-9.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.PALPANDI, Advocate (SR-24354[F] dated 08/12/2020)

ORDER MADE IN
H.C.P. (MD) No.597 of 2020
04.12.2020

SE (CO)
KM (17.12.2020) 4P 8C