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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

H.C.P.No.832 of 2021

Banupriya
W/o.Murali

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
represented by the
Secretary, Home, Prohibition
and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.
- 3.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.
- 4.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
- 5.The Inspector of Police,
The Civil Supplies CID,
Kancheepuram Unit,
Kancheepuram.
- 6.The Superintendent of Prison,
Central Prison,
Vellore.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Habeas Corpus
calling for the records relating to the detention order passed



in D.O.No.17/2021 dated 04.05.2021 passed by the second respondent u/s.3(1) r/w 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) and set aside the same and direct the respondent to produce the petitioner's husband Murali S/o.Umapathi, aged about 30 years, the detenu, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.K.Thenrajan
For Respondents: Mr.R.Muniyapparaj
Government Advocate [crl.side]

ORDER

[Order of the Court was made by R.N.MANJULA, J]

The petitioner is the wife of the detenu viz., Murali S/o.Umapathi, aged about 30 years. The detenu has been detained by the second respondent by his order in D.O.No.17/2021 dated 04.05.2021, 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 7 of 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 Government Advocate [Crl.side] 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 Government Advocate [Crl.side] strongly 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 Government Advocate [Crl.side], 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 04.05.2021. The petitioner made a representation on 17.05.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.05.2021. The remarks were duly received on 10.06.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 25.06.2021.

6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 4 days were Government holidays and hence, there was a delay of 11 days in submitting the remarks by the Detaining Authority. It is the further contention of the petitioner that the remarks were received on 10.06.2021 and there was a delay of 8 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies after the Additional Chief Secretary dealt with it, of which 2 days were Government holidays. Hence, there was inordinate delay of 17 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 11 day in submitting the remarks by the Detaining Authority and unexplained delay of 6 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.17/2021 dated 04.05.2021 passed by the second respondent is set aside. The detenu, viz., Murali S/o.Umapathi, aged about 30 years, is directed to be released



forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar(CS)

Sub Assistant Registrar

gm
To

- 1.The Secretary, Home, Prohibition
and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kancheepuram District,
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- 3.The Additional Secretary,
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The Civil Supplies CID,
Kancheepuram Unit,
Kancheepuram.
- 6.The Superintendent of Prison,
Central Prison,Vellore.
- 7.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
- 8.The Public Prosecutor,High Court, Madras.

H.C.P.No.832 of 2021

A.SK(08.09.2021)