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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2021

Coram

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

H.C.P.No.1105 of 2021

Bhavani
D/o.Raji

..Petitioner/Sister of the Detenue

Vs.

1. State of Tamil Nadu
represented by its Secretary,
Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
Commissioner's Office,
Vepery, Chennai - 600 007.
3. The Additional Secretary to
Government of India,
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 Prison,
Central Prison, Puzhal,
Chennai.
5. The Inspector of Police,
Civil Supplies C.I.D.,
Chennai Unit.

..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 of the detention order in Memo No.01/Black Marketing Act/2021 dated 04.03.2021 on the file of second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Balaji S/o.Raji, aged about 31 years, who is now confined at Central Prison, Puzhal, before this Court and set him at liberty.



For Petitioner : Mr.S.Venkatesan
For Respondents: Mr.R.Muniyapparaj
Government Advocate [Crl.side]

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ORDER

[Order of the Court was made by P.N.PRAKASH, J]

The petitioner is the sister of the detenu viz., Balaji S/o.Raji, aged about 31 years. The detenu has been detained by the second respondent by his order in Memo No.01/Black Marketing Act/2021 dated 04.03.2021, holding him to be a "Black Marketeer", as contemplated under Section 3(1) r/w 3(2)(b) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.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 04.03.2021. The petitioner made a representation dated 24.06.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.07.2021. The remarks were duly received on 12.07.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.07.2021.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining



Authority, of which 4 days were Government Holidays and hence, there was an inordinate delay of 6 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.07.2021 and there was a delay of 4 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies after the Deputy Secretary dealt with it, of which 2 days were Government Holidays. Hence, there was inordinate delay of 8 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.

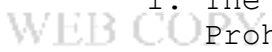
10. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and unexplained delay of 2 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.01/Black Marketing Act/2021 dated 04.03.2021 passed by the second respondent is set aside. The detenu, viz., Balaji S/o.Raji, aged about 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar



To

- H.C.P.No.1105 of 2021

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