



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

H.C.P.No.1366 of 2021

Durga
W/o.Balaji

.. Petitioner

Vs.

1. The Secretary to Government,
Co-operation, Food and Consumer
Protection Department, 2nd Floor,
Namakkal Kavignar Maligai,
Fort St.George, Chennai - 600 009.
2. The District Collector cum
District Magistrate (Detaining Authority),
Tiruvallur, Tiruvallur District.
3. The 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-II,
Puzhal, Chennai - 600 066.
5. The Inspector of Police,
CSCID Tiruvallur Unit,
Tiruvallur District.
Crime No.169 of 2021

.. 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 pertaining to the order of detention passed by the second respondent in Order No.PBMMSECA No.02/2021 dated 13.07.2021, set aside the same, direct to produce the detenu Balaji s/o.Ramar, aged about 34 years, who is presently detained at Central Prison II, Puzhal, Chennai - 600 066 before this Court and set him at liberty forthwith.



WEB COPY

For Petitioner : Mr.R.Ganesh Kumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu viz., Balaji s/o.Ramar, aged about 34 years. The detenu has been detained by the second respondent by his order in No.PBMMSECA No.02/2021 dated 13.07.2021, holding him to be a "Black Marketeer", as contemplated under the Central Act No.7 of 1980 of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 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 Additional Public Prosecutor 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 Additional Public Prosecutor 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 Additional Public Prosecutor, 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 13.07.2021. The petitioner made a representation dated 06.08.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.08.2021. The remarks were duly received on 21.10.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.10.2021.



6. It is the contention of the petitioner that there was a delay of 69 days in submitting the remarks by the Detaining Authority, of which 28 days were Government Holidays and hence, there was an inordinate delay of 41 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 21.10.2021.

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 41 days in submitting the remarks by the Detaining Authority. 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 No.PBMMSECA No.02/2021 dated 13.07.2021 passed by the second respondent is set aside. The detenu, viz., Balaji s/o.Ramar, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

gm



To

1. The Secretary to Government,
Co-operation, Food and Consumer
Protection Department, 2nd Floor,
Namakkal Kavignar Maligai,
Fort St.George, Chennai - 600 009.
2. The District Collector cum
District Magistrate (Detaining Authority),
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Puzhal, Chennai - 600 066.
5. The Inspector of Police,
CSCID Tiruvallur Unit,
Tiruvallur District.
6. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
7. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.67131

H.C.P.No.1366 of 2021

KSM[co]
NSK 16/12/2021