

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice V.SIVAGNANAM

H.C.P.No.2532 of 2020

Geetha

.. Petitioner/
mother of the detenu

Vs.

- 1.The Secretary to Government,
Department of Food, Supplies
and Consumer Affairs,
K-Block, Vikas Bhavan, I.P. Estate,
New Delfi - 110 002.
- 2.The District Collector and District Magistrate,
Vellore District,
Vellore.
- 3.State of Tamil Nadu
Represented by its Secretary to Government,
Co-operation Food & Consumer
Protection Department,
Fort St.George, Chennai - 600 009.
- 4.The Superintendent of Police,
Vellore District,
Vellore.
- 5.The Superintendent of Prison,
Borstal School, Central Prison,
Vellore.
- 6.The Inspector of Police,
CSCID, Vellore Unit,
Vellore.
(Crime No.145/2020)

.. Respondents

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 2nd respondent made in C3.D.O.No.94/2020 (TPDA No.0115 dated

07.11.2020) under the provisions of Section 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) dated 07.11.2020 and quash the same and direct the 2nd respondent to produce the body and person of the petitioner's son Murali, son of Dhanapal, aged about 28 years, now confined in Borstal School, Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.K.T.Sathya Seelan

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by V.SIVAGNANAM.]

The petitioner is the mother of the detenu, Murali, son of Dhanapal, aged about 28 years. The detenu has been detained by the second respondent by his order dated 07.11.2020 in C3.D.O.No.94/2020, holding him to be a "Black Marketeer", as contemplated under the provisions 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 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 07.11.2020. The petitioner made a representation on 07.12.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.12.2020. The remarks were duly received on 17.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 08.01.2021.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 2 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 17.12.2020 and there was a delay of 19 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 8 days were Government Holidays, hence, there was inordinate delay of 11 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 11 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3.D.O.No.94/2020 dated 07.11.2020, passed by the second respondent is set aside. The detenu, viz., Murali, son of Dhanapal, aged about 28 years, is

directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Secretary to Government,
Department of Food, Supplies
and Consumer Affairs,
K-Block, Vikas Bhavan, I.P. Estate,
New Delhi - 110 002.
- 2.The District Collector and District Magistrate,
Vellore District,
Vellore.
- 3.The Secretary to Government,
Co-operation Food & Consumer
Protection Department,
Fort St.George, Chennai - 600 009.
- 4.The Superintendent of Police,
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- 5.The Superintendent of Prison,
Borstal School, Central Prison,
Vellore.
- 6.The Inspector of Police,
CSCID, Vellore Unit, सत्यमेव जयते
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.2532 of 2020

PMK (CO)
CB(29/03/2021)