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H.C.P(MD)No.755 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.755 of 2021

Vinisha Mary

... Petitioner

-vs-

1.The Additional Secretary,
Government of India,
Ministry of Consumer affairs,
Food and Public Distribution
(Department of Consumer affairs)
Room No. 270 Krishi Bhavan,
New Delhi - 110 001.

2. The Secretary,
Government of Tamil Nadu,
Co-operation,
Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai - 600 009.

3. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

4. The Inspector of Police,
CSCID, Thoothukudi.

5. The Superintendant of Prison,
Central Prison,
Palayamkottai.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, call for the records pertaining to the order of detention passed by the third respondent in his proceedings H.S.(M) Confdl.No.61/2021 dated 21.04.2021 and quash the same as illegal and produce the detenu namely Rijoe, son of Luccas, aged about 31 years, now he is confined in Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar
For Respondent-1 : Mr.P.Malaiyendran - For R1
For Respondents : Mr.S.Ravi
(R2 to R5) Standing counsel for the State



O R D E R

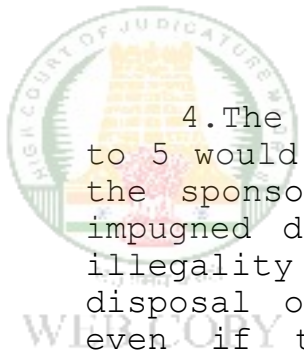
(Order of the Court was made by J.NISHA BANU, J.)

This Habeas Corpus Petition has been filed by the wife of the detenu, namely, Rijoe, S/o.Luccas, aged about 31 years, challenging the detention order in H.S.(M) Confdl.No. 61 of 2021 dated 21.04.2021, passed by the third respondent, branding him as "Black Marketeer" as contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).

2. Mr.T.Lenin Kumar, the learned counsel appearing for the petitioner assails the detention order on the following grounds:-

(i) Non-application of mind on the part of the detaining authority, as in the grounds of detention, the detaining authority arrived at his subjective satisfaction that the detenu moved a bail application in Crime No.38 of 2021, before the learned Judicial Magistrate No.IV, Thoothukudi and the same was dismissed. Since in similar cases, the concerned Court granted bail, the subjective satisfaction of the detaining authority that the detenu will come out on bail is nothing but ipse-dixit; (ii) The detenu was deprived of making effective representation due to illegible documents; (iii) the third respondent did not say under which provision of Law, the Quality Inspector has been authorized to give certificate; (iv) Failure to forward the document as contemplated under Section 3(4) of Act 7 of 1980, within the period of 7 days, would vitiate the detention order; (v) There was a delay in considering the representation; (vi) The arrest of the detenu neither intimated to the petitioner nor any relatives; (vii) Failure to explain the non-supply of booklet pertaining to the detention order vitiate the detention order; (viii) The documents supplied is not the translated version and the same deprived the right of the detenu in making effective, meaningful and purposeful representation and (ix) There is lot of contradiction between the Tamil and English version of the grounds of detention.

3. Even though the petitioner has raised the above grounds to quash the impugned detention order, the learned counsel for the petitioner would mainly place arguments on the ground of delay in disposal of the petitioner's representation. In this regard, the learned counsel for the petitioner would state 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. Thus, he would pray to quash the impugned order of detention.



4.The learned Standing Counsel appearing for the respondents 2 to 5 would state that after satisfying with the materials placed by the sponsoring authority, the detaining authority has passed the impugned detention order and therefore, there is no infirmity or illegality in the same. He would produce the proforma regarding the disposal of the petitioner's representation and would state that even if there is any delay in disposal of the petitioner's representation, it has not caused any prejudice to the rights of the detenu. Thus, he would pray for dismissal of this petition.

5.Heard the learned counsel for the petitioner as well as the respondents.

6.Perusal of the proforma produced by the learned Standing Counsel appearing for the respondents would show that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 05.05.2021, which was received on 12.05.2021. Remarks on the said representation were called for on 17.05.2021 and it was received on 31.05.2021. The Deputy Secretary concerned has dealt with the representation on 02.06.2021 and the Hon'ble Minister concerned has dealt with the representation on 14.06.2021 and finally, the representation came to be rejected on 15.06.2021. It is seen that in between 17.05.2021 and 31.05.2021, there was a delay of 13 days and after excluding 5 Government Holidays, there was a delay of 8 days and in between 04.06.2021 and 14.06.2021, there is a delay of 13 days, after excluding 4 Government Holidays, there was a delay of 5 days, in total, there was a delay of 13 days, in considering the petitioner's representation.

7.At this juncture, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of **Rajammal vs. State of Tamil Nadu and another** reported in **1999 (1) CC 417**, wherein, the Apex Court has held that it is for the authority concerned to explain the delay, if any, in disposal of the representation of the detenu and if any delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8.In the case on hand, as stated supra, the delay of **13** days in considering the representation of the petitioner remains unexplained by the respondents. Hence, in our considered view, the impugned detention order is liable to be set aside solely on the ground of delay by following the above decision of the Apex Court.

9.In fine, the Habeas Corpus Petition is allowed. The detention order in H.S.(M) Confdl.No.61/2021, dated 21.04.2021 passed by the third respondent, is set aside. Consequently, the detenu, namely, Rijoe, S/o.Luccas, aged about 31 years, who is now detained at Central Prison, Palayamkottai, is directed to be



released forthwith, unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

mpk/ebsi

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 Additional Secretary,
Government of India,
Ministry of Consumer affairs,
Food and Public Distribution
(Department of Consumer affairs)
Room No. 270 Krishi Bhavan, New Delhi - 110 001.
2. The Secretary,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat, Fort St. George, Chennai - 600 009.
3. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 4.The Joint Secretary to Government,
Public (Law & Order), Fort saint George,
Chennai-600 009.
5. The Inspector of Police, CSCID, Thoothukudi.
6. The Superintendant of Prison, Central Prison, Palayamkottai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-26444[F] dated 16/08/2021)

H.C.P. (MD) No.755 of 2021

DATED : 16.08.2021

_RD(27.08.2021) 4P 9C