



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.10.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

H.C.P. (MD) No.1037 of 2021

S.Usha ...Petitioner/Wife of the Detenu
-Vs-

1. The Secretary to Government,
Food, Co-operation and Consumer Protection Department,
Namakkal Kavignar Maaligai,
Secretariat,
Chennai-600 009.
2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli
3. The Additional Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibavan,
New Delhi - 110 001.
4. The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District. ...Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in No.2/BM/2021 dated 14.07.2021 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband i.e., Sivabalan, aged about 42 years, S/o.Kariyappa, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner :Mr.N.Pragalathan
For R1,R2 & R4 :Mr.S.Ravi
Additional Public Prosecutor
For R3 :Mrs.Victoria Gowri
Assistant Solicitor General of India



O R D E R

(Order of the Court was made by S.ANANTHI, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Sivabalan, S/o. Kariyappa, aged about 42 years, challenging the detention order in No.2/BM/2021 dated 14.07.2021 passed by the second 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).

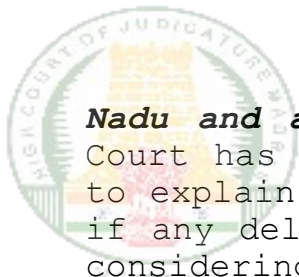
2. Mr.N.Pragalathan, learned counsel for the petitioner, would argue that even though the petitioner has raised several grounds, he has confined his arguments only to the delay in disposal of the petitioner's representation. It is submitted by the learned counsel for the petitioner that the procedural 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.

3. Mr.S.Ravi, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. In the instant case, the proforma has been furnished by the learned Additional Public Prosecutor. The proforma would indicate that as against the impugned detention order, the petitioner has made a representation to the 1st respondent on 26.07.2021 which was received on 28.07.2021. Remarks on the said representation were called for on 30.07.2021 and it was received on 06.08.2021. The Deputy Secretary concerned has dealt with the representation on 09.08.2021 and the Hon'ble Minister concerned has dealt with the representation on 12.08.2021 and finally, the representation came to be rejected on 13.08.2021. It is seen that in between 30.07.2021 and 06.08.2021, there was a delay of 6 days. After excluding the government holidays of 2 days, there was a delay of 4 days in considering the petitioner's representation.

6. At this juncture, it is useful to refer the decision of the Honourable Apex Court in the case of **Rajammal vs. State of Tamil**
<https://hcservices.ecourts.gov.in/hcservices/>



Nadu and another, reported in **1999 (1) SCC 417**, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of nay indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, as stated supra, the delay of 4 days in considering the representation of the petitioner has not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside solely on the ground of delay by following the decision of the Honourable Apex Court referred supra.

8. In fine, the Habeas Corpus Petition is allowed. The detention order in No.2/BM/2021 dated 14.07.2021 passed by the second respondent, is set aside. Consequently, the detenu, Sivabalan, S/o.Kariyappa, aged about 42 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 (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cm/jbr

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 Secretary to Government,
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Chennai-600 009.
2. The Commissioner of Police,
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4. The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.

5. The Joint Secretary to Government,
Public(Law & Order),
Fort St. George,
Chennai - 600 009.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1037 of 2021

DATED : 25.10.2021

MGJ/PM(10.11.2021) 4P 7C