



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P.(MD) No.822 of 2020

Lakshmi ... Petitioner/Wife of Detenu

-vs-

1.The Additional Secretary to Government of India,
Department of Consumer Affairs
Food and Consumer Affairs Department,
Room No.270, Krishibhavan
New Delhi - 110 001.

2.The Secretary to Government,
State of Tamil Nadu,
Department of Co-operation Food & Consumer Protection
Secretariat,
Chennai - 9.

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

4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records pertaining to the detention order passed by the third respondent in M.H.S.Confdl No.08/2020 dated 26.09.2020 and quash the same and consequently, direct the respondents to produce the body or person of Mr.Subramanian, S/o Vanumamalai, aged 55 years, confined in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.K.Ashokkumar Ram
Central Govt. Senior Panel Counsel (for R1)
Mr.K.Dinesh Babu
Additional Public Prosecutor (for R2 to R4)



O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The Habeas Corpus Petition has been filed by the wife of the detenu, namely, Subramanian, S/o Vanumamalai, aged 55 years, who has been branded as "Black Marketeer" by the third respondent in Detention Order in M.H.S.Confdl No.08/2020 dated 26.09.2020, as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980).

2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 26.09.2020, Mr.T.A.Ebenezer, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has been violated and there is an inordinate and unexplained delay in considering the representation of the petitioner and on this sole ground, the detention order is liable to be set aside.

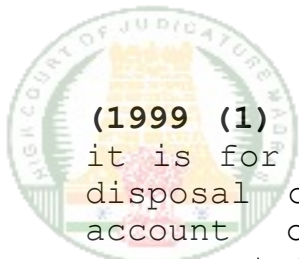
3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents 2 to 4 would argue that the detaining authority, namely, the third respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the third respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the instant case, it is not in dispute that the detenu was detained by the order of the third respondent dated 26.09.2020. Aggrieved over the same, a representation dated 02.10.2020 has been sent to the first respondent and the same was received on 08.10.2020 and on 09.10.2020, remarks were called for and the same were received on 18.11.2020. The Deputy Secretary dealt with the matter on 20.11.2020 and the Additional Chief Secretary dealt with the matter on 23.11.2020. The concerned Minister dealt with the matter on 02.12.2020 and thereafter, the detenu's representation was rejected on 08.12.2020. It is seen that there was delay of 39 days between 09.10.2020 and 18.11.2020. It is also seen that there are 10 Government holidays and after excluding the same, there is a delay of 29 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another**

<https://hcservices.ecourts.gov.in/hcservices/>



(1999 (1) SCC 417) the Honourable Apex Court 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, there is absolutely no explanation for the delay of 29 days in considering the representation of the detenu. 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 order of detention passed by the second respondent, in M.H.S.Confdl No.08/2020 dated 26.09.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Subramanian, S/o Vanumamalai, aged 55 years, 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 (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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.

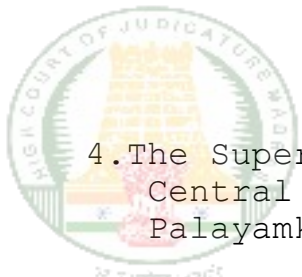
To

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4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

5.The Joint Secretary to Government
Public(law & order),
Fort St.George, Chennai-9

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

H.C.P. (MD) No.822 of 2020
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