



WEB COPY

H.C.P.(MD) No.1012 of 2020

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.ILANGOVA

H.C.P.(MD) No.1012 of 2020

R.Jeyanthi

... Petitioner/Wife of the
Detenu

-vs-

1.The Secretary to Government,
Co-operation Food and Consumer Protection Department,
Namakkal Kavignar Maaligai 2nd Floor,
Secretariat, Chennai - 600 009.

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

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in M.H.S.Confdl No.11/2020 dated 23.10.2020 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 i.e., the petitioner's husband namely, Vijayakumar, S/o Balakrishnan, aged about 45 years, now detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.C.Nandagopal (for R3)
Mr.K.Dinesh Babu

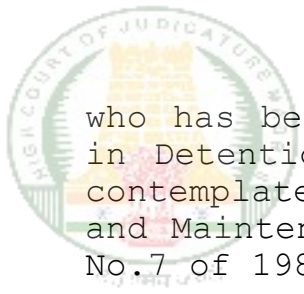
Additional Public Prosecutor (for R1, R2 & R4)

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, Vijayakumar, S/o Balakrishnan, aged about 45 years,

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



who has been branded as "Black Marketeer" by the second respondent in Detention Order in M.H.S.Confdl No.11/2020 dated 23.10.2020, as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980).

WEB COPY

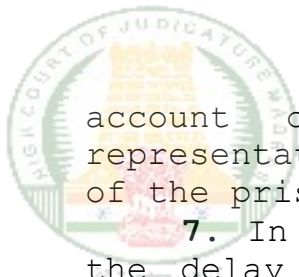
2.Though several grounds have been raised challenging the impugned order of detention passed by the second respondent, dated 23.10.2020, Mr.N.Pragalathan, learned counsel for the petitioner would contend that the procedural safeguards guaranteed under Articles 21 and 22 of the Constitution of India has 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 1, 2 and 4 would argue that the detaining authority, namely, the second 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 second 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 second respondent dated 23.10.2020. Aggrieved over the same, a representation dated 02.11.2020 has been sent to the first respondent and the same was received on 05.11.2020. Though remarks were called for on 06.11.2020, it was received only on 18.12.2020. The Deputy Secretary dealt with the matter on 23.12.2020 and the Additional Chief Secretary dealt with the matter on 23.12.2020 and the Law Secretary dealt with the matter on 24.12.2020. The concerned Minister dealt with the matter on 05.01.2021 and thereafter, the detenu's representation was rejected on 13.01.2021. It is seen that there was delay of 41 days between 06.11.2020 and 18.12.2020. It is also seen that there are 10 Government holidays and after excluding the same, there is a delay of 31 days in considering the representation of the detenu.

6.In the case of **Rajammal vs. State of Tamil Nadu and another (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 any 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 31 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.11/2020 dated 23.10.2020, is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Vijayakumar, S/o Balakrishnan, aged about 45 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

- 1.The Secretary to Government,
Co-operation Food and Consumer Protection Department,
Namakkal Kavignar Maaligai 2nd Floor,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Additional Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibhavan
New Delhi - 110 001.



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

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.

+1 CC to M/s.C.NANDAGOPAL, Advocate (SR-3190[F] dated 04/02/2021)

H.C.P. (MD) No.1012 of 2020

03.02.2021

srk(CO)

KK(09.03.2021) 4P 8C