



WEB COPY

H.C.P.(MD) No.1105 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGOVAN**

H.C.P. (MD) No.1105 of 2020

Mariammal

... 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 Tamilnadu
Co-operation, Food and Consumer
Protection Department
Secretariat, Fort St.George
Chennai-600 009

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

4.The Inspector of Police
CSCID, Tirunelveli

5.The Superintendent 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 calling for the records pertaining to the order of detention passed by the third respondent in his proceedings M.H.S.Confdl.No.13/2020, dated 19.11.2020, and quash the same as illegal and produce the detenu namely Chellaiah @ Kuttiyan, son of Karuppasamy, aged about 51 years, now he is confined in Central Prison, Palayamkottai, before this Court and set him at liberty.



For Petitioner : Mr.T.Lenin Kumar
For Respondents : Mr.S.Jeyasingh
Central Govt. Standing Counsel for R1
Mr.K.Dinesh Babu
Additional Public Prosecutor for R2 to R5

WEB COPY

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the mother of the detenu, namely, Chellaiah @ Kuttiyan, son of Karuppasamy, aged about 51 years, challenging the detention order in M.H.S.Confdl.No.13/2020, dated 19.11.2020, passed by the third respondent, branding him as "Black Marketeer" 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. Mr.T.Lenin Kumar, 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.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the third 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 furnished by the learned Additional Public Prosecutor would indicate that as against the impugned detention order, the petitioner made a representation to the second respondent on 01.12.2020 and it was received on 03.12.2020. Remarks were called for on 05.12.2020 and it was received on 01.02.2021. The Deputy Secretary dealt with



the matter on 11.02.2021. The concerned Minister dealt with the matter on 18.02.2021 and the representation came to be rejected on 19.02.2021. It is seen that in between 05.12.2020 and 01.02.2021, there was a delay of 36 days, after excluding the Government Holidays of 21 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 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 36 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 M.H.S.Confdl.No.13/2020, dated 19.11.2020, passed by the third respondent, is set aside. Consequently, the detenu, namely, Chellaiah @ Kuttiyan, son of Karuppasamy, aged about 51 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(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

krk

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 Tamilnadu,
Co-operation, Food and Consumer
Protection Department,
Secretariat, Fort St.George,
Chennai-600 009.
3. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 4.The District Collector and
District Magistrate,
Tenkasi District, Tenkasi.
- 5.The Inspector of Police,
CSCID, Tirunelveli.
- 6.The Superintendent of Prison,
Central Prison, Palayamkottai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.JEYASINGH, Advocate (SR-13998[F] dated 26/03/2021)

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-14031[F] dated 26/03/2021)

H.C.P. (MD) No.1105 of 2020
26.03.2021

SJ(CO)
TR(28.04.2021) 4P 10C