



WEB COPY

H.C.P.(MD) No.1188 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.1188 of 2020

Kala Rani

... Petitioner/Wife of the Detenu

-vs-

1.The 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 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

3.The Secretary

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

4.The District Collector and District Magistrate

Tenkasi District
Tenkasi

5.The Inspector of Police

Civil Supplies Criminal Investigation Department
Tirunelveli Unit

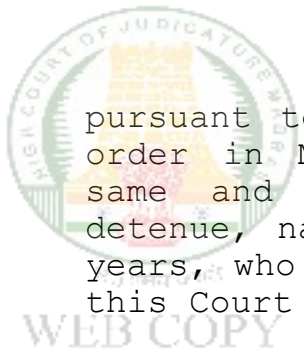
6.The Superintendent

Central Prison
Palayamkottai
Tirunelveli

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records in

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



pursuant to the proceedings of the fourth respondent in detention order in M.H.S.Confdl.No.09/2020, dated 16.10.2020 and quash the same and consequently, direct the respondents to produce the detenu, namely, Isari Balan @ Moorthy, son of Shanmugiah, aged 42 years, who is now detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Jeyasingh
Central Government Standing Counsel for R1 & R2
Mr.K.Dinesh Babu
Additional Public Prosecutor for R3 to R6

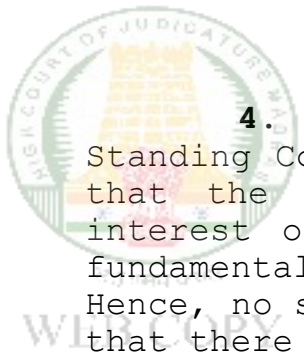
O R D E R

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

This habeas corpus petition has been filed by the wife of the detenu, namely, Isaribalan @ Moorthy, son of Shunmugaiah, aged 42 years, against the detention order in M.H.S.Confdl.No.09/2020, dated 16.10.2020, passed by the fourth respondent, branding him as "Black Marketeer" as contemplated under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980).

2. The learned counsel for the petitioner would submit that the impugned detention order is liable to be set aside on three grounds. Firstly, the representation of the petitioner was not considered in time and there is unexplained and inordinate delay in considering the representation; secondly, the similar case particulars relied on by the Detaining Authority to arrive at the subjective satisfaction are not similar to the case of the detenu and thirdly, lack of application of mind on the part of the Detaining Authority.

3. It is the submission of the learned counsel for the petitioner that the detenu was arrested in the ground case on 23.09.2020 for his involvement in Tirunelveli Civil Supplies Criminal Investigation Department Crime No.170 of 2020 and remanded to the judicial custody till 03.11.2020. His bail application in CrI.M.P.No.5517 of 2020 was rejected by the learned Judicial Magistrate No.II, Tirunelveli, on 05.10.2010 and his bail application in CrI.M.P.No.5437 of 2020 was pending before the Sessions Court, Tirunelveli. But, the Detaining Authority, while arriving at the subjective satisfaction, has stated that the detenu is likely to come out on bail by filing a bail application in the ground case. According to the learned counsel, this shows lack of application of mind on the part of the Detaining Authority while passing the impugned detention order.



4. Per contra, Mr.S.Jeyasingh, learned Central Government Standing Counsel appearing for the respondents 1 and 2, would argue that the offence in which the detenu is involved affects the interest of the poor citizens at large and he does not have any fundamental right to involve in such activities at any event. Hence, no sympathy can be shown on the detenu. It is also contended that there is no illegality in the impugned order.

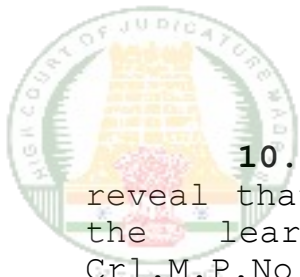
5. Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents 3 to 6, while reiterating the counter affidavit filed by the fourth respondent, would argue that the detention order has been rightly passed by the Detaining Authority taking note of the antecedents of the detenu and also to prevent him from indulging in similar activities in future, which affects public interest. It is further submitted that the delay in considering the petitioner's representation has been properly explained and there is no inordinate delay and hence, the habeas corpus petition is liable to be dismissed.

6. We have heard the rival submissions and perused the materials placed on record.

7. 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 first respondent on 27.10.2020 and it was received on 29.10.2020. Remarks were called for on 31.10.2020 and it was received on 18.12.2020. The Deputy Secretary dealt with the matter on 22.12.2020, 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 the representation came to be rejected on 08.01.2021. It is seen that in between 24.12.2020 and 05.01.2021, there is a delay of six days, after excluding the Government Holidays of five days, in considering the representation.

8. 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.

9. In the case on hand, as stated supra, the delay of six days in considering the representation of the petitioner has not been properly explained by the respondents.



10. Further, a perusal of Page No.283 of the booklet would reveal that the co-accused in the ground case were granted bail by the learned Judicial Magistrate No.II, Tirunelveli, in CrI.M.P.No.5516 of 2020, on the ground that they did not have any previous case. But, the detenu herein has three adverse cases to his credit. Hence, as rightly, pointed out by the learned counsel for the petitioner, the similar case relied on by the Detaining Authority in the detention order is not similar to the case of the detenu.

11. Furthermore, as referred supra, the bail application filed by the detenu before the Sessions Court in CrI.M.P.No.5437 of 2020 was pending on the date of passing of the impugned detention order. But, the Detaining Authority has stated that there is a likelihood of the detenu in coming out on bail by filing another bail application. When the bail application was pending, there was no necessity to file another bail application, which shows lack of application of mind on the part of the Detaining Authority while reaching the subjective satisfaction. Hence, in our considered view, the detention order is liable to be set aside on the grounds stated above.

12. In fine, the Habeas Corpus Petition is allowed. The order of detention in M.H.S.Confdl.No.09/2020, dated 16.10.2020, passed by the fourth respondent, is set aside. Consequently, the detenu, namely, Isaribalan @ Moorthy, son of Shunmugaiah, aged 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(T & P)

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

+1 CC to M/s.S.JEYASINGH, Advocate (SR-11014[F] dated 15/03/2021)

H.C.P. (MD) No.1188 of 2020
12.03.2021

SE (CO)
TR(29.03.2021) 5P 10C