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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN

H.C.P.No.21 of 2022

Visalatchi

...Petitioner

Vs.

- 1.The Principal Secretary to Government
Food and Consumer Protection Department
2nd Floor, Namakkal Kavingar Maligai
Secretariat, Chennai-9
- 2.The District Collector and District Magistrate
Thirupathur District
Thirupathur 635 601
- 3.The Inspector of Police
Civil Supplies CID
Vellore Unit, Vellore District
- 4.The Superintendent of Police
Thirupathur District
Thirupathur
- 5.The Superintendent of Prison
Vellore Central Prison
Vellore 632 002

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records in connection with the order of detention passed by the 2nd respondent dated 02.12.2021 in C3.D.O.No.60/2021 against the petitioner's son viz., Sakthivel, S/o.Krishtapillai, aged 26 years, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Riyas

For Respondents : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu viz., Sakthivel, S/o.Krishtapillai, aged 26 years. The detenu has been detained by the 2nd respondent by his order dated 02.12.2021 in C3.D.O.No.60/2021, holding him to be a "BLACK MARKETEE", as contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor filed his counter affidavit and strongly opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 02.12.2021. The petitioner made a representation dated 19.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.12.2021. The remarks were duly received on 11.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 21.01.2022.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence, there was an inordinate delay of 14 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.01.2022 and there was a delay of 9



days in considering the representation by the Hon'ble Minister for Food and Civil Supplies after the Deputy Secretary dealt with it, of which 4 days were Government Holidays, hence, there was a delay of 5 days in considering the representation.

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7. In *Rekha Vs. State of Tamil Nadu* [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In *Sumaiya Vs. The Secretary to Government* [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In *Tara Chand Vs. State of Rajasthan and others*, reported in [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 14 days in submitting the remarks by the Detaining Authority and unexplained delay of 5 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in C3.D.O.No.60/2021 dated 02.12.2021, passed by the 2nd respondent is set aside. The detenu viz., Sakthivel, S/o.Krishtapillai, aged 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

gya

To

1.The Principal Secretary to Government
Food and Consumer Protection Department
2nd Floor, Namakkal Kavingar Maligai
Secretariat, Chennai-9



2.The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai-9

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3.The District Collector and District Magistrate
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4.The Inspector of Police
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6.The Superintendent of Prison
Vellore Central Prison
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7.The Public Prosecutor
High Court, Madras

+1cc to M/s.M.Mohammed Riyas, Advocate Sr.No.29449

H.C.P.No.21 of 2022

NK(CO)
RVM(29/04/2022)