



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

Coram

The Honourable Mr. Justice PARESH UPADHYAY
and

The Honourable Mr. Justice A.D.JAGADISH CHANDIRA

H.C.P.No.681 of 2022

Ashok Kumar

.. Petitioner

Vs

1. The Additional Secretary to
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.
 2. The Secretary to the Government,
Co-operation, Food and Consumer Protection department,
II Floor, Namakkal Kavignar Maaligai,
Secretariat,
Chennai - 600 009.
 3. The District Collector and District Magistrate
of Krishnagiri District,
Office of the District Collector and District Magistrate,
Krishnagiri, Krishnagiri District.
 4. The Superintendent of Police,
Krishnagiri, Krishnagiri District.
 5. The Superintendent of Prison,
Central Prison, Salem,
Salem District.
 6. The Inspector of Police,
Civil Supplies CID, Krishnagiri,
Krishnagiri District.
- .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order passed in S.C.No.04/2022 (CS) dated 12.01.2022 passed by 3rd respondent under Section 3(1) r/w



3(2)(a) of the Prevention of Black Marketing and Maintenance and Supplies of Essential Commodities Act 1980 (Central Act 7 of 1980) and set aside the same and direct the respondents to produce the petitioner's friend Suresh, S/o.Logudhas, aged about 39 years, the detenu, now confined in the Central Prison, Salem, before this Court and set the petitioner's friend Suresh, S/o.Logudhas, aged about 39 years, the detenu herein, at liberty.

For Petitioner : Mr.P.M.Jayachandran

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

ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

The petitioner is the friend of the detenu Suresh, S/o.Logudhas, aged about 39 years. The detenu has been detained by the third respondent by his order in S.C.No.04/2022 (CS) dated 12.01.2022, holding him to be a "Black Marketeer", as contemplated under the provision of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.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 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 on behalf of the petitioner was not considered in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor 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.

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5. The Detention Order in question was passed on 12.01.2022. A representation was made on behalf of the petitioner on 20.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.04.2022. The remarks were duly received on 13.06.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 24.06.2022.

6. It is the contention of the petitioner that there was a delay of 47 days in submitting the remarks by the Detaining Authority, of which, 15 days were Government Holidays and hence there was an inordinate delay of 32 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 13.06.2022 and there was a delay of 10 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 2 days were Government Holidays, hence, there was an inordinate delay of 8 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable 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 Honourable 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 32 days in submitting the remarks by the Detaining Authority and unexplained delay of 8 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department. 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 S.C.No.04/2022 (CS) dated 12.01.2022, passed by the third respondent is set aside. The detenu, viz., Suresh, S/o.Logudhas, aged about 39 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

nsd/48

To

1. The Additional Secretary to
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(Department of Consumer Affairs),
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5. The Superintendent of Prison,
Central Prison, Salem,
Salem District.

6. The Inspector of Police,
Civil Supplies CID, Krishnagiri,
Krishnagiri District.

7. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.

8. The Public Prosecutor,
High Court, Madras.

H.C.P.No.681 of 2022

NRL(CO)
UMA(06/07/2022)