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H.C.P.No.1727 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06..12..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and

The Honourable Mr. Justice **N.ANAND VENKATESH**

Habeas Corpus Petition No.1727 of 2022

S.Sameemvullah
Son of Sabjan

..... Petitioner

-Versus-

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai 600009.
- 2.The District Collector and District Magistrate,
Tirupathur District, Tirupathur.
- 3.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi 110 001.
- 4.The Superintendent of Police,
Tirupathur, Tirupathur District.
- 5.The Superintendent of Prison,
Central Prison – Vellore, Vellore District.



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6. The State Rep. by its
Inspector of Police,
Civil Supply – CID – Vellore Unit,
Vellore District.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the records relating to the petitioner's brother's detention order under Tamil Nadu Act 14 of 1982 vide Detention Order dated 03.08.2022 on the file of the 2nd respondent made in proceedings Memo C3.D.O.No.42/2022 and to quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's brother viz., Sanavullah, aged 30 years, Son of Sabjan, before this court and set him at liberty.

For Petitioner : Mr.J.Kather Hussain

*For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor*

ORDER

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

The petitioner is the brother of the detenu – Sanavullah. The detenu has been detained by the second respondent by his order in C3.D.O.No.42/2022 dated 03.08.2022, holding him to be a "Black



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Marketeer", as contemplated under the provision of 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 detenu was not considered in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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



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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 03.08.2022. A representation was made on behalf of the detenu on 16.08.2022 (which was actually received on 22.08.2022). Thereafter, remarks were called for by the Government from the Detaining Authority on 23.08.2022. The remarks were duly received on 20.10.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 03.11.2022.

6. It is the contention of the petitioner that there was a delay of 58 days in submitting the remarks by the Detaining Authority, of which, 19 days were Government Holidays and hence there was an inordinate delay of 39 days in submitting the remarks. It is the further contention of the petitioner that though the remarks were received on 20.10.2022, there was a delay of 12 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies Department after the under Secretary dealt with it, of which, 5 days were Government Holidays, hence, there was an inordinate delay of 7 days in considering the representation.



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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 39 days in submitting the remarks by the Detaining Authority and unexplained delay of 7 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.



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In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo C3.D.O.No.42/2022 dated 03.08.2022 passed by the second respondent is set aside. The detenu, viz., Sanavullah, is directed to be released forthwith unless his detention is required in connection with any other case.

**(P.N.P., J.) (N.A.V.,J.)
06..12..2022**

Index: Yes/No
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To

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Secretariat, Fort St. George, Chennai 600009.
- 2.The District Collector and District Magistrate,
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- 3.The Additional Secretary,
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- 5.The Superintendent of Prison,
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- 6.The Inspector of Police,
Civil Supply – CID – Vellore Unit,
Vellore 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.



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