



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

H.C.P.NO.1993 OF 2021

Baby
W/o.Ashokan

.. Petitioner/
Detenue's Wife

Vs.

State represented by its:

1. State of Tamil Nadu
represented by Secretary of State
Co-operation, Food and Consumer
Protection Department,
St.George Fort, Chennai - 600 009.
2. The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.
3. The District Collector and District Magistrate,
Tiruvallur District, Tamil Nadu.
4. The Superintendent of Police,
Tiruvallur District, Tamil Nadu.
5. The Superintendent of Police,
Central Prison II, Puzhal,
Chennai - 600 066. Tamil Nadu.
6. The Inspector of Police,
Civil Supplies C.I.D.,
Tiruvallur District. Tamil Nadu.

.. Respondents



Habeas Corpus 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 third respondent dated 02.11.2021 in PBMMSECA No.03/2021 against the petitioner's husband Ashokan s/o.Murugesan, aged 38 years, who is confined at Central Prison II, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Chandrasekaran

For Respondents: Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.A.NAKKIRAN, J]

The petitioner is the wife of the detenu viz., Ashokan s/o.Murugesan, aged 38 years. The detenu has been detained by the third respondent by his order in PBMMSECA No.03/2021 dated 02.11.2021, holding him to be a "Black Marketeer", as contemplated under the Central Act No.7 of 1980 of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 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 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 02.11.2021. The petitioner made a representation dated 13.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.11.2021. The remarks were duly received on 26.11.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.12.2021.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence, there was an inordinate delay of 6 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 26.11.2021. Hence, there was inordinate delay of 6 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 8 days in submitting the remarks by the Detaining Authority. 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 PBMMSECA No.03/2021 dated 02.11.2021 passed by the third respondent is set aside. The detenu, viz., Ashokan s/o.Murugesan, aged 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary of State
Co-operation, Food and Consumer
Protection Department,
St.George Fort, Chennai - 600 009.
2. The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.
3. The District Collector and District Magistrate,
Tiruvallur District, Tamil Nadu.
4. The Superintendent of Police,
Tiruvallur District, Tamil Nadu.
5. The Superintendent of Police,
Central Prison II, Puzhal,
Chennai - 600 066. Tamil Nadu.
6. The Inspector of Police,
Civil Supplies C.I.D.,
Tiruvallur District. Tamil Nadu.



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.1993 of 2021

RSI (CO)
PM/08/04/2022