



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.180 of 2022

Anusuya

... Petitioner/Wife of the Detenu

Vs.

- 1.The Secretary to Government of India,
Ministry of Consumer Affairs, Food and Public Distribution,
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
- 2.The Principal Secretary to the Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai - 600 009.
- 3.The District Collector and District Magistrate,
Madurai District,
Madurai.
- 4.The Superintendent of Prison,
Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the third respondent made in his proceedings in C.M.P.No.02/2022(CS) dated 12.01.2022 in detaining the detenu under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 (Central Act 7 of 1980) as a Black Marketeer and quash the same and direct the respondents to produce the detenu namely Sonaimuthu, S/o.Chithiraivelu, male aged about 45 years, who is detained at Central Prison, Madurai, before this Honourable Court and set him at liberty.

For Petitioner : Mr.A.Balaji

For Respondent R-1: Mr.H.Velavadhas, CGSC

For Respondents : Mr.T.Senthil Kumar,

R-2 to R-4 Additional Public Prosecutor.



O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

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The Petitioner is the wife of the detenu, namely, Sonaimuthu, S/o.Chithiraivelu, male aged about 45 years. The detenu has been detained by the third respondent by his order in C.M.P.No.02/2022(CS) dated 12.01.2022, holding him to be a "Black Marketeer", as contemplated under 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 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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay with regard to the same.

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.

5.The Detention Order in question was passed on 12.01.2022. The petitioner made a representation, dated 20.01.2022 and the same was received on 24.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.01.2022 and the remarks were received on 04.02.2022, in which, there is a delay of 4 days, after excluding the Government Holidays of 3 days. Thereafter, the Deputy Secretary has dealt with the representation on 08.02.2022 and thereafter, Minister for Electricity, P & E has dealt with the representation on 10.02.2022. Ultimately, the petitioner's representation was rejected on 10.02.2022. Thus there is a delay of 4 days in considering the representation which remains unexplained.



6. In ***Rekha vs. State of Tamil Nadu***, reported in 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.

7. In ***Sumaiya vs. The Secretary to Government***, reported in 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.

8. 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.

9. In the subject case, admittedly, there is an unexplained delay of 4 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.02/2022(CS) dated 12.01.2022, passed by the third respondent is set aside. The detenu, namely, Sonaimuthu, S/o.Chithiraivelu, male aged about 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PM

To

1.The Secretary to Government of India,
Ministry of Consumer Affairs, Food and Public Distribution,
Room No.270, Krishi Bhavan,
New Delhi - 110 001.

2.The Principal Secretary to the Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,

<https://hcservices.ecourts.gov.in/hcser/043/009>



3.The District Collector and District Magistrate,
Madurai District,
Madurai.

4.The Superintendent of Prison,
Central Prison,
Madurai.

5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-9.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.BALAJI, Advocate (SR-22836[F] dated 29/04/2022)

H.C.P (MD) .No.180 of 2022
27.04.2022

RK(28/05/2022) 4P 8C