



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

H.C.P. (MD) No.185 of 2022

K.Kanthammal

... Petitioner

Vs.

1. The Secretary to Government,
Food, Co-operation and Consumer Protection Department,
Namakkal Kavignar Maaligai,
Secretariat,
Chennai - 600 009.
2. The District and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Additional Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibhavan,
New Delhi - 110 001.
4. The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the Detention Order passed in M.H.S.Confdl.No.02/2022 dated 05.01.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's husband i.e. Karuthapandi, S/o.Velayutham, aged about 42 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents 1, 2 & 4

: Mr.S.Ravi

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, Karuthapandi, S/o.Velayutham, aged about 42 years. The detenu has been detained by the third respondent by his proceedings in M.H.S.Confdl.No.02/2022 dated 05.01.2022 holding him to be a "Black Marketer", as contemplated under the provision of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.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 respondents 1, 2 and 4. 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 arguments 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 in 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 05.01.2022. The petitioner made a representation on 04.02.2022 and the same was received on 09.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.02.2022 and remarks were received on 09.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.03.2022. Though the representation dated 04.02.2022 was received on 09.02.2022, it was rejected only on 23.03.2022 with the delay of 14 days, after excluding the Government Holidays of 9 days. The delay in considering the representation 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 present case, admittedly, there is an unexplained delay of 14 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 M.H.S.Confdl.No.02/2022 dated 05.01.2022 passed by the second respondent is set aside. The detenu, namely, Karuthapandi, S/o.Velayutham, aged about 42 years, is directed to be released forthwith unless his detention is required in connection with any other case.

11. We have quashed the order of detention only on the technical ground of delay. From the submissions of the learned Additional Public Prosecutor, we find that the detenu is an habitual offender and has been involved in series of crimes relating to black marketing in PDS rice. The Police is directed to keep a watch on the detenu to prevent any recurrence of such offences by the detenu.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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2. The District and District Magistrate,
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4. The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.
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.R.MURUGAPPAN, Advocate (SR-22589[F] dated 29/04/2022)

H.C.P. (MD) No.185 of 2022

29.04.2022

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