



HCP(MD)No.1191 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.10.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.1191 of 2022

Sathya

.. Petitioner / wife of the deten

Vs

1. The Additional Secretary to Government,
Government of India,
Ministry of Consumer Affairs, Food and Public
Distribution (Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi.
2. The Principal Secretary,
Government of Tamilnadu,
Co-Operation, Food and Consumer Protection Department,
Secretariat, Fort St.George,
Chennai-600 009.
3. The District Collector and District Magistrate,
Madurai District,
Madurai.
4. The Inspector of Police,
CSCID, Madurai.



HCP(MD)No.1191 of 2022

5. 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 entire records relating to the detention order passed by the third Respondent in C.M.P.No.04/2022 (CS) dated 30.06.2022 and to quash the same and direct the Respondent produce the body of person of the detenu Muthu @ Gorilla Muthu, S/o.Solaithevar, aged about 45 years, now confined at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Muthu @ Gorilla Muthu, S/o.Solaithevar, aged about 45 years. The detenu has been detained by the second respondent by his order in C.M.P.No.04/2022 (CS) dated 30.06.2022



holding him to be a "Black Marketeer", as contemplated under Section 3(1) r/w 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central 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 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 by filing his counter. He would submit that though



HCP(MD)No.1191 of 2022

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 30.06.2022. The petitioner made a representation dated 14.07.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.07.2022. The remarks were duly received on 02.08.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 12.08.2022.

6. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 4 days were Government holidays and hence, there was an inordinate delay of 8 days in submitting the remarks.

7. In **Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)**, the



HCP(MD)No.1191 of 2022

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.



HCP(MD)No.1191 of 2022

11.In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.04/2022 (CS) dated 30.06.2022 passed by the second respondent is set aside. The detenu, viz., Muthu @ Gorilla Muthu, S/o.Solaithevar, aged about 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) & (N.A.V.,J.)
28.10.2022

Index : Yes/No
Internet : Yes
PJJ

To:

1. The Additional Secretary to the Government,
Government of India,
Ministry of Consumer Affairs, Food and Public
Distribution (Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi.
2. The Principal Secretary,
Government of Tamilnadu,
Co-Operation, Food and Consumer Protection Department,
Secretariat, Fort St.George,
Chennai-600 009.



HCP(MD)No.1191 of 2022

3. The District Collector and District Magistrate,
Madurai District,
Madurai.
4. The Inspector of Police,
CSCID, Madurai.
5. The Superintendent of Prison,
Central Prison,
Madurai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1191 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

PJL

H.C.P.(MD)No.1191 of 2022

28.10.2022