



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1908 of 2021

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Nasira Banu

... Petitioner

Vs.

1.The Additional Secretary to the Government,
Government of India,
Food and Consumer Protection Department,
Ministry of Consumer Affairs Food and Public Protection
Department,
New Delhi - 110 001.

2.The State rep. by
The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai - 600 009.

3.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order of Detention made in C.No.02/B.M./Detention/C.P.O./ TRC/2021 dated 18.11.2021 on the file of the Commissioner of Police, Tiruchirappalli City / the third respondent herein, branding the petitioner's husband / detenu by name Ismail, S/o.Sulaiman, aged about 40 years, as "Black Marketer" who is now confined in Central Prison, Tiruchirappalli, Tiruchirappalli District and quash the impuged order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondents 2 to 4 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor.

For 1st Respondent : Mr.AV.Malaiyendiran
Central Government Standing Counsel



O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

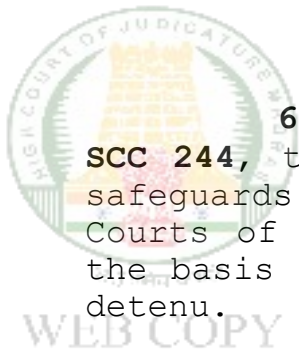
The petitioner is the wife of the detenu, namely, Ismail, S/o.Sulaiman, aged about 40 years. The detenu has been detained by the third respondent by his proceedings in C.No.02/B.M./Detention/C.P.O./ TRC/2021 dated 18.11.2021 holding him to be a "Black Marketer", as contemplated under the provision of 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, the learned Central Government Standing Counsel appearing for the first respondent and the learned Additional Public Prosecutor appearing for respondents 2 to 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 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 18.11.2021. The petitioner made a representation, dated 07.12.2021 and the same was received on 10.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.10.2021 and remarks were received on 21.12.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.12.2021. Though the representation dated 07.12.2021 was received on 10.12.2021, it was rejected only on 29.12.2021 with the delay of 4 days, after excluding the Government Holidays of 4 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 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.No.02/B.M./Detention/C.P.O./TRC/2021 dated 18.11.2021 passed by the third respondent is set aside. The detenu, namely, Ismail, S/o.Sulaiman, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

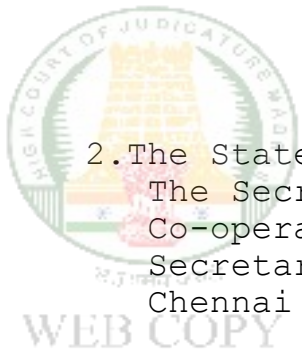
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant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

To

1.The Additional Secretary to the Government,
Government of India,
Food and Consumer Protection Department,
Ministry of Consumer Affairs Food and Public Protection
Department, New Delhi - 110 001.

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



2.The State rep. by
The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai - 600 009.

3.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

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

5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-600 009.

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

+1 CC to M/s.T.J.EBENEZER CHARLES, Advocate (SR-12353[F] dated
16/03/2022)

H.C.P. (MD) No.1908 of 2021
14.03.2022

RK(25/03/2022) 4P 8C