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H.C.P.No.584 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.584 of 2023

Sapreena

.. Petitioner /
Wife of the detenu

VS

1. The Secretary to Government
Co-operation Food and Consumer Production Department
2nd Floor, Namakkal Kavingar Maligai
Secretariat
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police /
Detaining Authority
Coimbatore City
Coimbatore District

3. 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

4. The Superintendent of Prison
Central prison-Coimbatore
Coimbatore District



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5. State rep. By its
The Inspector of Police
CSCID Pollachi
Coimbatore District
(Crime No.50/2023)

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the petitioner's husband detention under Act 14 / 1982 vide Detention Order dated 20.03.2023 on the file of the second respondent herein made in proceedings Memo No. C.No.01/PBMMSEC.Act/IS/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband Thiru.R.Nizamudeen @ Nizam, son of Rahamathullah, aged 39 years before this Court and set him at liberty, now the petitioner's husband is detained at Central Prison, Coimbatore.

For Petitioner : Mr.S.Senthilvel
for Mr.W.Camyles Gandhi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 13.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court



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on 10.04.2023 inter alia assailing a detention order dated 20.03.2023 bearing reference C.No.01/PBMMSEC.Act/IS/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 6(4) of TNSC (RDCS) Order 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act 1955 in Crime No.50 of 2023 on the file of Pollachi Civil Supplies Criminal Investigation Department.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Black Marketeer' vide 'Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980)' [hereinafter 'Black Marketing and EC Act' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the ground that some of the pages in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 13.04.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.50 of 2023 on the file of Pollachi



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Civil Supplies Criminal Investigation Department for alleged offences under

Sections 6(4) of T.N.S.C (RDCS) order 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Senthilvel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though several grounds have been urged in the support affidavit, learned counsel for petitioner at the hearing exhorted one point in his campaign against the impugned detention order and that one point turns on delay in considering a representation sent qua impugned detention order.

6. Responding to the submission, learned State Additional Public Prosecutor submitted that there is a delay in considering the representation but it is not a long delay. We make it clear that the delay in considering the representation point in challenges to preventive detention orders cannot be decided quantitatively. It has to be decided qualitatively based on the facts, circumstances and the trajectory the representation has taken, in other words, it has to be decided on case to case basis. In the case on hand, we adopt such



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an approach and we find that delay vitiates the impugned detention order. We also hasten to make it clear that there can be no straight jacket formula in terms of number of days as regards this point is concerned and therefore, this order will not serve as precedent in all and every case.

7. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 20.03.2023 bearing reference C.No.01/PBMMSEC.Act/IS/2023 made by the second respondent is set aside and the detenu Thiru.R.Nizamudeen @ Nizam, S/o.Thiru.Rahamathullah, aged about 39 years, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
31.07.2023

Index : Yes /No

Neutral Citation : Yes /No

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.



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To

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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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