



H.C.P.No.692 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.692 of 2023

Thiru.Ponraj

.. Petitioner

VS

1. The Additional Secretary to Government of India
Ministry of Consumer Affairs
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan
New Delhi – 110 001
- 2.The Principal Secretary to Government
Food and Consumer Protection Department
II Floor, Namakkal Kavingnar Maaligai
Secretariat, Chennai – 600 009
3. The District Collector and District Magistrate
Vellore, Vellore District
4. The Superintendent of Police
Vellore District, Vellore
5. The Superintendent of Prison
Central Prison
Vellore, Vellore District



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6. The Inspector of Police
Civil Supply Crime Investigation Department
Vellore, Vellore District

.. 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 in connection with the order of detention passed by the 3rd respondent in his office ref.C3.D.O.No.20/2023 dated 29.03.2023 against the petitioner's brother-in-law Thiru.Parthiban, son of Thavamanickam, aged about 43 years, at Central Prison, Vellore, Vellore District and set aside the same and direct the respondent to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan

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 26.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 20.04.2023 inter alia assailing a detention order dated 29.03.2023 bearing reference C3.D.O.No.20/2023 made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the



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Sponsoring Authority.

2. Brother-in-law of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)a(ii) of Essential Commodities Act, 1955 in Crime No.39 of 2023 on the file of Civil Supplies CID, Vellore.

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 non-furnishing of arrest card in the grounds booklet furnished to the detenu 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 26.04.2023 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.



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3. There is no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.39 of 2023 on the file of Civil Supplies CID, Vellore Unit 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.E.Kannadasan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. At the time of admission i.e., in the Admission Board, the point that non-furnishing of arrest card in the grounds booklet furnished to the detenu prevented the detenu from making an effective representation was urged, however in the final hearing, learned counsel for petitioner projected his argument qua challenge to the impugned preventive on delay in considering the representation sent qua impugned preventive detention order.

6. Responding to the submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us the list of dates



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and the details are as follows:

Representation dated	..	24.04.2023
Representation received date	..	26.04.2023
Remarks called on	..	28.04.2023
Reminder date	..	---
Remarks received on	..	15.05.2023
File submitted on	..	16.05.2023
Under Secretary dealt with on	..	17.05.2023
Deputy Secretary dealt with on	..	18.05.2023
Principal Secretary dealt with on	..	18.05.2023
Secretary Law dealt with on	..	19.05.2023
Minister for Food and Civil Supplies dealt with on	..	22.05.2023
Rejection letter prepared on	..	22.05.2023
Rejection letter sent to the detenu on (through e-mail)	..	22.05.2023

7. We find that even if the intervening 9 public/Government holidays 29.04.2023, 30.04.2023, 01.05.2023, 06.05.2023, 07.05.2023, 13.05.2023, 14.05.2023, 20.05.2023 and 21.05.2023 are excluded, there is a delay of 10 days in considering the representation. 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



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on hand, we adopt such an approach and we find that 10 days 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.

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

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.03.2023 bearing reference C3.D.O.No.20/2023 made by the second respondent is set aside and the detenu Thiru.Parthiban, S/o.Thiru.Thavamanikkam, aged about 43 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

Neutral Citation : Yes

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



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To

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and
R.SAKTHIVEL, J.,**

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