



H.C.P.No.774 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.774 of 2023

Dhanalakshmi

.. 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
Department of Co-operation
Food and Consumer Protection Department
2nd Floor, Namakkal Kavingnar Maaligai
Secretariat, Chennai – 600 009
3. The District Collector and District Magistrate
Thirupathur District, Thirupathur
4. The Superintendent of Police
Thirupathur District, Thirupathur
5. The Superintendent of Prison
Central Prison
Vellore



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6. The Inspector of Police
Civil Supplies CID Police Station
Thirupathur & 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 dated 19.04.2023 in C3.D.O.No.08/2023 against the petitioner husband Kanagaraji, male, aged 44 years, son of Chennakesavan, who is confined in Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the wife of the detenu assailing a 'preventive detention order dated 19.04.2023 bearing reference C3/D.O.08/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, sixth respondent is the sponsoring authority and third respondent is the detaining authority as impugned preventive detention order has been made by third respondent.



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2. Impugned detention order has been made under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980) on the premise that the detenu is a 'Black Marketeer'.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.06 of 2023 on the file of Civil Supplies CID, Thirupathur for alleged offences under Sections 6(4) of Tamil Nadu Scheduled Commodities (RDCS) Order, 1982 read with 7(1)(a)(ii) of Essential Commodities Act, 1955. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.D.Balaji, learned counsel representing the 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.



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6. Responding to the submission, learned State Additional Public

Prosecutor submitted to the contrary and placed before us the list of dates and the details are as follows:

<i>'Representation dated</i>	..	<i>02.05.2023</i>
<i>Representation received date</i>	..	<i>04.05.2023</i>
<i>Remarks called on</i>	..	<i>05.05.2023</i>
<i>Reminder date</i>	..	<i>---</i>
<i>Remarks received on</i>	..	<i>09.06.2023</i>
<i>File submitted on</i>	..	<i>12.06.2023</i>
<i>Under Secretary dealt with on</i>	..	<i>13.06.2023</i>
<i>Deputy Secretary dealt with on</i>	..	<i>13.06.2023</i>
<i>Secretary dealt with on</i>	..	<i>13.06.2023</i>
<i>Secretary Law dealt with on</i>	..	<i>15.06.2023</i>
<i>Minister for Food and Civil Supplies</i>		
<i>dealt with on</i>	..	<i>16.06.2023</i>
<i>Rejection letter prepared on</i>	..	<i>16.06.2023</i>
<i>Rejection letter sent to the</i>		
<i>detenu on (through e-mail)</i>	..	<i>16.06.2023</i>

7. We find that even if the intervening 10 public/Government holidays 06.05.2023, 07.05.2023, 13.05.2023, 14.05.2023, 20.05.2023, 21.05.2023, 27.05.2023, 28.05.2023, 03.06.2023, 04.06.2023 are excluded, there is a delay of 24 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



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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 an approach and we find that 24 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 19.04.2023 bearing reference C3.D.O.No.08/2023 made by the third respondent is set aside and the detenu Thiru.Kanagaraji, S/o.Thiru.Chennakesavan, aged about 44 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

WEB COPY

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R.SAKTHIVEL, J.,**

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