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HCP NO.1064 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM

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

H.C.P.NO.1064 OF 2023

Rabiya

.. 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 Bhawan,
New Delhi – 110 001.
- 2.The Secretary to the Government
Co-operation, Food and Consumer Protection Dept.,
II Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai – 600 009.
- 3.District Collector and District Magistrate
of Krishnagiri District
Office of the District Collector and
District Magistrate, Krishnagiri,
Krishnagiri District.



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4.The Superintendent of Police
Krishnagiri,
Krishnagiri District.

5.The Superintendent of Prison
Central Prison
Salem, Salem District.

6.The Inspector of Police
Civil Supplies CID,
Krishnagiri,
Krishnagiri District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records relating to the detention order passed in S.C.No.07/2023 (CS) dated 04.05.2023 passed by the 3rd respondent 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 Act 7 of 1980) and set aside the same and direct the respondents to produce the petitioner's husband Aslam Basha S/o. Arab John aged about 34 years (who is presently undergoing detention in the Central Prison, Salem) before this Court and set him at liberty.

For Petitioner : Mr.P.M.Jayachandran

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



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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 23.06.2023, the following order was made:

'H.C.P.No.1064 of 2023

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

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 13.06.2023 inter alia assailing a detention order dated 04.05.2023 bearing reference S.C.No.07/2023(CS) made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the Sponsoring Authority.

2.To be noted, wife of detenu is the petitioner.

3.Mr.P.M.Jayachandran, learned counsel on record for petitioner is before us. Learned counsel for



petitioner submits that ground case qua the detenu is for alleged offence under Section 6(4) of the Tamil Nadu Scheduled Commodities (RDCS) Order 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955 in Crime No.183 of 2022 on the file of Civil Supplies Criminal Investigation Department, Krishnagiri.

4.The aforementioned detention order has been made on the premise that the detenu is a 'Black Marketeer' under 'the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980)' [hereinafter 'PBMMSEC Act' for the sake of convenience and clarity].

5.The detention order has been assailed inter alia on the ground that live and proximate link between the grounds of detention and purpose of detention has snapped as the detenu was arrested on 04.04.2023 but the impugned preventive detention order has been passed on 04.05.2023.

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

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



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2.The aforementioned Admission Board captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3.Mr.P.M.Jayachandran, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4.To be noted, 'order dated 04.05.2023 bearing reference S.C.No.07/2023(CS)' made by third respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5.We are of the view that it is not necessary to be detained by



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detailing the facts or by delving into greater factual details ie., factual matrix as one clean and neat point raised by learned counsel for petitioner at the hearing (notwithstanding very many points raised in the support affidavit) straight away finds favour with us.

6.The aforementioned one point is delay in considering the representation made by the detenu. Learned counsel submits that a representation dated 12.06.2023 was sent to the first respondent and there is inordinate delay in considering the same.

7.In response to the above, learned State Additional Public Prosecutor has placed before us a chronicle capturing the trajectory the representation took and a scanned reproduction of the same is as follows:



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CO-OPERATION, FOOD AND CONSUMER PROTECTION (E1) DEPARTMENT
HABEAS CORPUS PETITION No.1064 OF 2023
HON'BLE MADRAS HIGH COURT

1. Category	:	BLACKMARKETEER
2. Name	:	Thiru.Asiam Basha (Male, aged 34 years), Son of Thiru.Arab John
3. Order of Detention and date	:	S.C.No.07/2023, dated 04.05.2023
4. District	:	District Collector and District Magistrate, Krishnagiri District, Krishnagiri
5. Representation dated	:	12.06.2023
6. Representation received date	:	15.06.2023
7. Remarks called on	:	16.06.2023
8. Reminder date	:	---
9. Remarks received on	:	11.07.2023
10. File Submitted on	:	11.07.2023
11. Under Secretary dealt with on	:	11.07.2023
12. Deputy Secretary dealt with on	:	12.07.2023
13. Secretary dealt with on	:	12.07.2023
14. Secretary Law dealt with on	:	12.07.2023
15. Minister for Food and Civil Supplies dealt with on	:	14.07.2023
16. Rejection letter prepared on	:	14.07.2023
17. Rejection letter sent to the detenu on(through e-mail)	:	14.07.2023

Government Holidays Falls on:

17.06.2023, 18.06.2023, 24.06.2023, 25.06.2023, 29.06.2023, 01.07.2023, 02.07.2023, 08.07.2023 and 09.07.2023.

P.B. SARAVANAKUMAR
DEPUTY SECRETARY TO GOVERNMENT

//True Copy//

[Signature]
Section Officer.



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8.The aforementioned chronicle makes it clear that there is 20 days delay in considering the representation of the detenu being representation dated 12.06.2023. We find that remarks have been called for on 16.06.2023 which was received only on 11.07.2023. In our considered view, there is a leap in the chronicle qua delay in considering the representation.

9.As regards delay in considering the representation, the legal principle is, it is a infraction of the constitutional safeguard ingrained in Clause 5 of Article 22 of the Constitution of India. As the delay in the case on hand is a clear infraction of the constitutional safeguard ingrained in Article 22(5) of the Constitution of India, we have no hesitation in coming to the conclusion that the impugned detention order deserves to be interfered with and set aside.

10.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 04.05.2023 bearing reference S.C.No.07/2023(CS) made by the third respondent is set aside and detenu



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Thiru. Aslam Basha, male, aged 34 years, S/o. Thiru. Arab John, is directed to be set at liberty forthwith, if not required in connection with any other case.

There shall be no order as to costs.

J.)

(M.S., J.)

(R.S.V.,

12.09.2023

Index:Yes

Neutral Citation : Yes

Speaking

TK

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



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To

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- 1.The Additional Secretary to
Government of India
Ministry of Consumer Affairs
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(Department of Consumer Affairs)
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- 7.The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

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