



H.C.P.No.1186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.1186 of 2023

Jailani

.. Petitioner

Vs

1.The Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan, New Delhi – 01.

2.The Principal Secretary to Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maaligai, Secretariat,
Chennai - 09.

3.The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.

4.The Superintendent of Police,
Kancheepuram District.

5.The Superintendent,
Central Prison, Puzhal, Chennai.

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

.. Respondents

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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 detention order passed by the 3rd respondent pertaining to the order made in Rc.No.108/2023/M6-D.O.No.17/2023 dated 06.06.2023 in detaining the detenu under Section 3(1) read with Section 3(2)(a) of the prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980), as a Black Marketeer and quash the same and direct the respondents to produce the detenu Bilal, son of Hussain, aged about 38 years, who is detained at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind
for R2 to R6

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed for Admission on 10.07.2023, the following proceedings/order was made:

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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 27.06.2023 inter alia assailing a 'detention order dated 06.06.2023 bearing reference Rc.No.108/2023/M6-D.O.No.17/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience]. To be noted, sixth respondent is the Sponsoring Authority.

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

3. Mr.O.Chembulingam, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 6(4) of Tamil Nadu Scheduled Commodities (Regulation and Distribution of Card System) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act, 1955, in Crime No.42 of 2023 on the file of Civil Supplies CID, Kancheepuram, Kancheepuram District.

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

5. The impugned preventive detention order has been assailed inter alia on the ground that some of the pages in the booklet furnished to the detenu were 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.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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3. The aforementioned proceedings/order dated 10.07.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 10.07.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission Board order will continue to be used in the instant final order also.

4. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for respondents 2 to 6 are before us.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that some of the pages in the booklet furnished to the detenu were illegible, however, in the Final Hearing Board today,



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learned counsel for petitioner exhorted one point in his campaign against the impugned preventive detention order and that one point turns on delay in considering a 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 and the details are as follows:

<i>'Representation dated</i>	<i>..</i>	<i>27.06.2023</i>
<i>Representation received date</i>	<i>..</i>	<i>30.06.2023</i>
<i>Remarks called on</i>	<i>..</i>	<i>03.07.2023</i>
<i>Reminder date</i>	<i>..</i>	<i>- - -</i>
<i>Remarks received on</i>	<i>..</i>	<i>07.07.2023</i>
<i>File submitted on</i>	<i>..</i>	<i>10.07.2023</i>
<i>Under Secretary dealt with on</i>	<i>..</i>	<i>10.07.2023</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>10.07.2023</i>
<i>Secretary dealt with on</i>	<i>..</i>	<i>10.07.2023</i>
<i>Secretary Law dealt with on</i>	<i>..</i>	<i>11.07.2023</i>
<i>Minister for Food and Civil</i>		
<i>Supplies dealt with on</i>	<i>..</i>	<i>14.07.2023</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>14.07.2023</i>
<i>Rejection letter sent to the</i>		
<i>detenu on (through e-mail)</i>	<i>..</i>	<i>14.07.2023</i>

Govt. Holidays:

01.07.2023. 02.07.2023, 08.07.2023 and 09.07.2023'



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7. We find that even if the intervening four public/Government holidays 01.07.2023, 02.07.2023, 08.07.2023 and 09.07.2023 are excluded there is not less than ten days delay 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 on hand, we adopt such an approach and we find that ten days delay vitiates the impugned preventive detention order. We hasten to make it clear that there can be no straight jacket formula in terms of number of days delay as regards this point is concerned and therefore this order will not serve as precedent in all and every case.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.06.2023 bearing reference Rc.No.108/2023/M6-D.O.No.17/2023 made by the third respondent is set aside and the detenu Thiru.Bilal, aged 38 years, son of Thiru.Hussain, is directed to be set at liberty forthwith, if not required



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in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
27.09.2023

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, Puzhal, Chennai – 600 066.

To

- 1.The Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan, New Delhi – 01.
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Kancheepuram District.
- 7.The Public Prosecutor,
High Court, Madras.

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

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