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H.C.P.No.1180 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.1180 of 2023

Mayan

Vs

.. Petitioner

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai – 09.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Addl. Secretary,
Government of India, Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
New Delhi – 110 001.
- 4.The Superintendent of Police,
Coimbatore, Coimbatore District.
- 5.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 6.State Rep. By its
The Inspector of Police,
Civil Supplies – CID Pollachi,
Coimbatore 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 entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 18.06.2023 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.21/BM/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Rajapandi, S/o.Mayan, aged 40 years, before this Court and set the petitioner's son at liberty from detention, now the petitioner's son 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
assisted by Mr.C.Aravind
for R1, R2 and R4 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 07.07.2023, 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 30.06.2023 inter alia assailing a 'detention order dated 18.06.2023 bearing reference Cr.M.P.No.21/BM/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the Sponsoring Authority.

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

3. Mr.W.Camyles Gandhi, 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 Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of the Essential Commodities Act, 1955' [hereinafter 'EC Act' for the sake of convenience and brevity] in Crime No.133 of 2023 on the file of Civil Supplies Criminal Investigation Department, Pollachi.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Black Marketeer' under 'the Prevention of Black Marketing 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 impugned preventive 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.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 07.07.2023 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 07.07.2023 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.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for respondents 1, 2 and 4 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 grounds booklet furnished to the detenu are 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>26.06.2023</i>
<i>Representation received date</i>	<i>..</i>	<i>28.06.2023</i>
<i>Remarks called on</i>	<i>..</i>	<i>30.06.2023</i>
<i>Reminder date</i>	<i>..</i>	<i>- - -</i>
<i>Remarks received on</i>	<i>..</i>	<i>13.07.2023</i>
<i>File submitted on</i>	<i>..</i>	<i>14.07.2023</i>
<i>Deputy Secretary dealt with on</i>	<i>..</i>	<i>14.07.2023</i>
<i>Secretary dealt with on</i>	<i>..</i>	<i>17.07.2023</i>
<i>Secretary Law dealt with on</i>	<i>..</i>	<i>18.07.2023</i>
<i>Minister for Food and Civil</i>		
<i>Supplies dealt with on</i>	<i>..</i>	<i>22.07.2023</i>
<i>Rejection letter prepared on</i>	<i>..</i>	<i>24.07.2023</i>
<i>Rejection letter sent to the</i>		
<i>detenu on (through e-mail)</i>	<i>..</i>	<i>24.07.2023</i>
<i>Govt. Holidays:</i>		
<i>01.07.2023, 02.07.2023, 08.07.2023, 09.07.2023,</i>		
<i>15.07.2023, 16.07.2023, 22.07.2023 and 23.07.2023'</i>		



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7. We find that even if the intervening eight public/Government holidays 01.07.2023, 02.07.2023, 08.07.2023, 09.07.2023, 15.07.2023, 16.07.2023, 22.07.2023 and 23.07.2023 are excluded there is not less than eighteen 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 eighteen 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 18.06.2023 bearing reference Cr.M.P.No.21/BM/2023 made by the second respondent is set aside and the detenu Thiru.Rajapandi, aged 40 years, son of Thiru.Mayan, is directed to be set at liberty forthwith, if not required in connection



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

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(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, Coimbatore.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai – 09.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Addl. Secretary,
Government of India,
Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bhavan, New Delhi – 01.
- 4.The Superintendent of Police,
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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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