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H.C.P.No.2139 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2139 of 2022

Lakshmi Devi

Wife of Mr.Santhosh Kumar

.. Petitioner

Vs.

1. Secretary to Government
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. Secretary to Government
Food and Consumer Protection Department
2nd Floor, Namakkal Kavignar Maligai
Secretariat, Chennai-600 009.
3. District Magistrate and District Collector
Tiruvallur District
Tiruvallur.
4. Superintendent of Police
Thiruvallur District
Thiruvallur.

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5. The Superintendent of Central Prison II
Puzhal, Chennai-66.

6. The Inspector of Police
Civil Supplies C.I.D.,
Tiruvallur.

.. 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 02.10.2022 in PBMMSECA No.8/2022 against the petitioner's husband Santhosh Kumar, Male, Age 38, S/o.Chandiran, who is confined in Central Prison, Puzhal, Chennai-600 066 and set aside the same and consequently, set him at liberty.

For Petitioner : Ms.G.Gayathri
representing Mr.M.Soundar Vijay Arulram
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by the spouse of detenu in this Court on 18.10.2022 assailing a 'detention order dated 06.10.2022 bearing reference PBMMSECA No.8/2022' [hereinafter 'impugned detention order']

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for the sake of convenience and clarity] made by the 'third respondent i.e., jurisdictional District Collector' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent i.e., jurisdictional Inspector of Police is the Sponsoring Authority.

2. Ms.G.Gayathri, learned counsel representing the counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for all the six respondents are before us.

3. The impugned detention order has been made by the Detaining Authority *inter alia* 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].

4. In petitioner's campaign against impugned detention order, one point finds favour with us and that point is delay in considering the representation.



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5. Learned counsel for the petitioner submits that the petitioner sent a representation but there is delay in considering the same. In response to this, learned Additional Public Prosecutor submitted that the representation of the detenu was received on 19.10.2022 and learned Additional Public Prosecutor placed before us a chronicle which reads as follows:

Representation dated	1	19.10.2022
Representation received date	1	19.10.2022
Remarks called on	1	21.10.2022
Reminder date	1	18.11.2022
Remarks received on	1	24.11.2022
File Submitted on	1	25.11.2022
Under Secretary dealt with on	1	26.11.2022
Deputy Secretary dealt with on	1	28.11.2022
Principal Secretary dealt with on	1	29.11.2022
Secretary Law dealt with on	1	30.11.2022
Minister for Food and Civil Supplies dealt with on	1	01.12.2022
Rejection letter prepared on	1	01.12.2022
Rejection letter sent to the detenu on (through e-mail)	1	01.12.2022
<u>Government Holidays Falls on:</u> 05.11.2022, 06.11.2022, 12.11.2022, 13.11.2022, 19.11.2022, 20.11.2022, 26.11.2022 and 27.11.2022		
<u>Delay Points:</u>		
Representation received on	1	19.10.2022
Reply sent to the Detenu	1	01.12.2022
Total Delay	1	43 Days
Government Holidays	1	13 Days
Delay in considering representation	1	30 Days

6. A careful perusal of the above makes it clear that there is 30 days delay which remains unexplained. Delay is long enough and it also remains unexplained. Delay in considering the representation is a facet of infraction



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of constitutional safeguard ingrained in Article 22(5) of Constitution of India. In the case on hand, the delay is clearly an infraction of the facet of Article 22(5) of Constitution of India and therefore, the impugned detention order cannot but be dislodged on this ground.

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

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.10.2022 bearing reference PBMMSECA No.8/2022 made by the third respondent is set aside and the detenu Mr.Santhosh Kumar, son of Mr.Chandiran is directed to be set at liberty forthwith, if not required in connection with any other case / cases.

9. Captioned HCP ordered on the above terms. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
13.02.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No

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

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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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