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H.C.P.No.2135 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2135 of 2022

Jagadeeshwari
Wife of Chakkravarthy

.. 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.



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4. Superintendent of Police
Thiruvallur District
Thiruvallur.

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.7/2022 against the petitioner's husband Chakkravarthy, male, age 53, S/o.Murugesan, who is confined in Central Prison, Puzhal, Chennai-600 066 and set aside the same and consequently, set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj,
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 HCP has been filed in this Court on 18.10.2022 assailing a 'detention order dated 02.10.2022 bearing reference PBMMSECA No.7/2022' [hereinafter 'impugned detention order' for the sake of convenience and



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

2. Mr.R.C.Paul Kanagaraj, learned counsel appearing on behalf of counsel on record for petitioner submits that the impugned detention order has been made by the Detaining Authority 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].

3. The ground case is Crime No.251 of 2022 for alleged offences under Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955 on the file of the sixth respondent, who is the Sponsoring Authority. There are two adverse cases.



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4. Mr.R.Muniyapparaj, learned Additional Public Prosecutor on behalf of all respondents is before us and learned Additional Public Prosecutor submits that counter affidavit has been filed.

5. Learned counsel appearing on behalf of counsel on record for the petitioner, notwithstanding very many averments in the support affidavit projected two points before us and they are as follows:

(i) The petitioner has sent representations dated 17.10.2022 to first and second respondents. The first respondent has not considered the representation and there is enormous delay in considering the representations by the second respondent;

(ii) Adverting to the impugned detention order, learned counsel for petitioner submitted that there is a reference to arrest memo and the impugned detention order also says that the arrest intimation has been given to one Mr.Gandhi, son of Mr.Natesan through SMS to his phone. Relevant paragraph in the impugned detention order reads as follows:



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'An arrest memo was prepared in which signature of accused Chakkaravarthy was obtained and informed arrest intimation to his relation Thiru.Gandhi, S/o.Natesan through SMS in cell phone 9710153740. Further, arrest intimation of the accused Chakkaravarthy was also sent to free Legal Aid Advocate Thiru.Sivanandam through 9940176130. Copy of arrest memo was served to him and the original was sent to the Court.'

After taking us through the aforementioned paragraph in the impugned detention order, learned counsel placed before us grounds of detention as served on the detenu in the form of booklet which shall hereinafter be referred to as 'grounds booklet' for the sake of convenience and clarity. Adverting to paragraph No.60, learned counsel submitted that only one page of the arrest memo has been given, the second page has not even been given and many columns have been filled in English and no translation has been given. More importantly, learned counsel for petitioner submitted that the impugned detention order is clearly a case of relying on extraneous material i.e., material which was not before the Detaining Authority.



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6. Learned Additional Public Prosecutor in response to the aforesaid

two points made submissions and summation of the submissions together with discussion and dispositive reasoning is as follows:

(i) With regard to first point i.e., delay in making the impugned detention order, it was submitted that there is nothing to demonstrate that the first respondent has considered the representations dated 17.10.2022. As regards second respondent, the following chronicle was placed before us and a scanned reproduction of the same is as follows:

Representation dated	:	17.10.2022
Representation received date	:	19.10.2022
Remarks called on	:	21.10.2022
Remarks date	:	
Remarks received on	:	17.11.2022
File Submitted on	:	24.11.2022
Under Secretary dealt with on	:	25.11.2022
Deputy Secretary dealt with on	:	26.11.2022
Principal Secretary dealt with on	:	28.11.2022
Secretary Law dealt with on	:	30.11.2022
Minister for Food and Civil Supplies dealt with on	:	05.12.2022
Rejection letter prepared on	:	07.12.2022
Rejection letter sent to the detainee on through e-mail	:	08.12.2022
<u>Government Holidays Falls on:</u>		
22.10.2022, 23.10.2022, 24.10.2022, 29.10.2022, 30.10.2022, 05.11.2022, 06.11.2022, 12.11.2022, 13.11.2022, 19.11.2022, 20.11.2022, 26.11.2022, 27.11.2022, 03.12.2022 and 04.12.2022		

A careful perusal of the chronicle makes it clear that there is 35



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days delay in considering the representation. Considering the representation is a constitutional safeguard ingrained in Article 22(5) of Constitution of India. In the case on hand, we have no difficulty in persuading ourselves to say that there is infraction of constitutional safeguard ingrained in Article 22(5) of Constitution of India. This by itself is good enough to interfere with the impugned detention order.

(ii) However, we proceed to the next point urged by the learned counsel for petitioner. As regards the next point, a careful perusal of booklet makes it clear that the second page of the arrest memo has not been furnished. This is a obtaining factual position and therefore, contra argument of learned Additional Public Prosecutor does not arise as the second page of arrest memo is not available. As rightly pointed out by the learned counsel for petitioner, the Detaining Authority has certainly referred to extraneous material in the impugned detention order. In any event, not providing the second page is also an infraction of the detenu's right to make an effective



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representation. Therefore, we have no difficulty in accepting and sustaining the second point as urged by learned counsel for petitioner.

7. As both the points urged by the learned counsel for petitioner finds favour with us, we came to the conclusion that the impugned detention order deserves to be set aside.

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

9. Ergo, the sequitur of the narrative, discussion and dispositive reasoning thus far is, captioned HCP is allowed. Impugned detention order dated 02.10.2022 bearing reference PBMMSECA No.7/2022 made by the third respondent is set aside and the detenu Thiru.Chakkaravarthy, son of Mr.Murugesan is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



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(M.S.,J.)

(M.N.K.,J.)

06.02.2023

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, Chennai-600 066.



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

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