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HCP No.2172 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.2172 of 2022

Kaleeshwari

.. 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 Bhavan',
New Delhi-110 001.

2.The Principal Secretary to Government,
Department of Co-operation, Food and
Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai-600 009.

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

4.The Superintendent of Police,
Tiruvallur District.

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

6.The Inspector of Police,
Civil Supplies Criminal Investigation Department,
Tiruvallur.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of Detention passed by the third respondent dated 07.10.2022 in PBMMSECA No.9/2022 against the petitioner's Husband Thanga Ganesan, male aged 40 years, S/o Periyasamy, who is confined at Central Prison-II, Puzhal, set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 brevity, convenience and clarity) has been filed in this Court on 27.10.2022 assailing a 'detention order dated 07.10.2022 bearing reference PBMMSECA No.9/2022' (hereinafter 'impugned detention order' for the sake of convenience and clarity) made by the 'third respondent/jurisdictional District Collector' (hereinafter 'detaining authority' for the sake of convenience and clarity).

2. Wife of detenu is the petitioner before us in the captioned HCP. The impugned detention order has been made by the detaining



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authority in exercise of powers under 'Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980)' {hereinafter 'Black Marketing and EC Act' for the sake of convenience and clarity}.

3. Mr.S.Senthilvel, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for all the respondents are before us. To be noted, sixth respondent is the sponsoring authority.

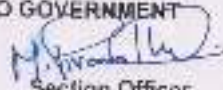
4. We are of the view that it is not necessary to be detained by detailing the facts or by delving into greater factual details ie., factual matrix as one clean and neat point raised by learned counsel for petitioner at the hearing (notwithstanding very many points raised in the support affidavit) straight away finds favour with us.

5. The aforementioned one point is delay in considering the representation made by the detenu. Learned counsel submits that a representation dated 31.10.2022 was sent to the first respondent and there is inordinate delay in considering the same.



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6. 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:

Representation dated	:	31.10.2022
Representation received date	:	04.11.2022
Remarks called on	:	08.11.2022
Reminder date	:	—
Remarks received on	:	17.11.2022
File Submitted on	:	25.11.2022
Under Secretary dealt with on	:	28.11.2022
Deputy Secretary dealt with on	:	28.11.2022
Principal Secretary dealt with on	:	28.11.2022
Secretary Law dealt with on	:	29.11.2022
Minister for Food and Civil Supplies dealt with on	:	08.12.2022
Rejection letter prepared on	:	07.12.2022
Rejection letter sent to the detenu on (through e-mail)	:	08.12.2022
<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, 27.11.2022, 03.12.2022 and 04.12.2022.		
<u>Delay Points:</u>		
Representation received on	:	04.11.2022
Reply sent to the Detenu	:	08.12.2022
Total Delay	:	34 Days
Government Holidays	:	10 Days
Delay in considering representation	:	24 Days
P.B. SARAVANAKUMAR DEPUTY SECRETARY TO GOVERNMENT //True Copy//  Section Officer.		



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7. The aforementioned chronicle makes it clear that there is 24 days delay in considering the representation of the detenu being representation dated 31.10.2022. We find that remarks have been called for on 08.11.2022 which was received only on 17.11.2022. In our considered view, there is a leap in the chronicle qua delay in considering the representation.

8. 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.

9. Ergo, the sequitur is, the impugned detention order dated 07.10.2022 bearing PBMMSECA No.9/2022 is set aside and detenu Mr.Thanga Ganesan, male, aged 40 years, S/o Mr.Periyasamy, is directed to be set at liberty forthwith, if not required in connection with any other case.

Captioned HCP is allowed on the above terms.



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(M.S., J.) (M.N.K., J.)
15.02.2023

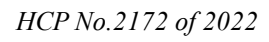
Index:Yes/No
Neutral Citation : Yes/No
mmi

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

To

- 1.The Additional Secretary to Government of India,
Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, 'Krishi Bhavan', New Delhi-110 001.
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- 6.The Inspector of Police,
Civil Supplies Criminal Investigation Department,
Tiruvallur.
- 7.The Public Prosecutor, High Court, Madras.

M.SUNDAR, J.



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15.02.2023