



HCP No.2208 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 04.01.2023

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.2208 of 2022

Krishnan
S/o.Murugan

... Petitioner

Vs.

- 1.The State represented by its
The Additional Secretary to Government,
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,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai – 600 009.
- 3.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Namakkal District.
- 4.The Superintendent of Police,
Office of the Superintendent of Police,
Namakkal District.



HCP No.2208 of 2022

5.The Superintendent of Prison,
Central Prison at Salem,
Hasthamapatty, Salem.

6.The Inspector of Police,
Civil Supplies Criminal Investigation
Department – CSCID,
Namakkal Unit.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records in Detention Order in C.M.P.No.27/Black Marketer/2022 [M1], dated 28.09.2022, on the file of the third respondent herein and set aside the same and direct the respondents herein to produce the body of detenu, namely, Settu @ Raja S/o.Govindan, aged 40 years, before this Court, now confined in Central Prison, Salem and set him at liberty.

For Petitioner : Ms.R.Subadra Devi

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **P.N.PRAKASH, J.**]

The petitioner is the cousin of the detenu, Settu @ Raja S/o.Govindan, aged 40 years. The detenu has been detained by the third respondent by his order in C.M.P.No.27/Black Marketer/2022 [M1], dated 28.09.2022, holding him to be a "Black Marketer", as contemplated under



HCP No.2208 of 2022

the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. Learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition. He would submit that though there was delay in



HCP No.2208 of 2022

considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 28.09.2022. The petitioner made a representation dated 26.10.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 03.11.2022. The remarks were duly received on 16.11.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.12.2022.

6. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 4 days were Government holidays and hence, there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 16.11.2022 and there was a delay of 7



HCP No.2208 of 2022

days in considering the representation by the Hon'ble Minister for Food and Civil Supplies after the Deputy Secretary dealt with it, of which 2 days were Government holidays. Hence, there was inordinate delay of 13 days in considering the representation.

7. In **Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)**, the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In **Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145)**, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In **Tara Chand vs. State of Rajasthan and others**, reported in **1980 (2) SCC 321**, the Honourable Supreme Court has held that any



HCP No.2208 of 2022

inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority and unexplained delay of 5 days in considering the representation by the Hon'ble Minister for Food and Civil Supplies. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.27/Black Marketer/2022 [M1], dated 28.09.2022, passed by the third respondent is set aside. The detenu, viz., Settu @ Raja S/o.Govindan, aged 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[PNP, J.] [NAV, J.]
04.01.2023

Index: Yes/No
gm/ssr



HCP No.2208 of 2022

To

1.The Additional Secretary to Government,
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,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai – 600 009.

3.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Namakkal District.

4.The Superintendent of Police,
Office of the Superintendent of Police,
Namakkal District.

5.The Superintendent of Prison,
Central Prison at Salem,
Hasthamapatty, Salem.

6.The Inspector of Police,
Civil Supplies Criminal Investigation
Department – CSCID, Namakkal Unit.

7.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.

8.The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP No.2208 of 2022

P.N.PRAKASH, J.
and
N.ANAND VENKATESH, J.

SSR

H.C.P.No.2208 of 2022

04.01.2023