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HCP No.2456 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

Coram

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

H.C.P. No.2456 of 2022

Prakash

S/o.Arunachalam

... Petitioner(uncle of detenu)

-VS-

- 1.The State rep. 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,
Erode District.



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

5.The Superintendent of Prison,
Central Prison, Coimbatore.

6.The Inspector of Police,
Civil Supplies Criminal
Investigation Department-CSCID,
Erode Unit.

... Respondents

Habeas Corpus 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 Cr.M.P.No.34/Black Marketer/2022/C-1 dated 26.09.2022 on the file of the 3rd respondent herein and set aside the same direct the respondents herein to produce the body of detenu, namely, Mr.Dhanapal S/o.Krishnan aged 49 years before this Court, now confined in Central Prison, Coimbatore and set him at liberty.

For Petitioner .. Mrs.R.Subadra Devi

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 22.11.2022



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by uncle of the detenu assailing a 'detention order dated 26.09.2022 bearing reference Cr.M.P.No.34/Black Marketer/2022-C1' [hereinafter 'impugned detention order' for the sake of brevity, convenience and clarity]. The impugned detention order has been made by the third respondent, i.e., 'jurisdictional District Collector and District Magistrate' [hereinafter 'detaining authority' for the sake of convenience and clarity].

2.Ms.R.Subadra Devi, learned counsel for petitioner submitted that the impugned detention order has been made branding the detenu as a 'Black Marketer' under the provisions of 'Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Central Act 7 of 1980]' {hereinafter 'Prevention of Black Marketing and EC Act' for the sake of convenience and clarity}.

3.It may not be necessary to dilate on facts or be detained by factual matrix as the petitioner's campaign against the impugned detention order turns on a neat and straight point, i.e., delay in considering the petitioner's representation against the impugned detention order.



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4. Adverting to ground [x] in the HCP support affidavit, learned counsel for petitioner submitted that a representation dated 18.11.2022 has been sent to the first and second respondents and the same is pending. To be noted, this ground [x] in the HCP support affidavit reads as follows:

'x) The representation sent on behalf of detenu to the 1st and 2nd respondent on 18.11.2022 and the same is pending.'

5. The aforementioned ground [x] in the support affidavit has been met by the respondents in paragraph 19 of the counter affidavit, which reads as follows:

'19. I humbly submitted that regarding para (x) of the grounds, the contention of the petitioner is not true. It is revealed clearly when the petitioner filing this Habeas Corpus Petition in the Hon'ble High Court of Madras, sent a representation dated 18.11.2022 to the Additional Secretary to Government, Food, Consumer Protection Department, Secretariat, Chennai and the same was considered by the 3rd respondent and the reply was sent to the 2nd respondent within stipulated time. There is no more consideration matter in his representation, it was rejected by the 2nd respondent and the reply was sent to the



petitioner. Hence, the averment of the petitioner the representation is pending is need not to be taken into consideration.'

A careful perusal of the above stated position of the respondents, more particularly, respondents 1 and 2 brings to light that even the date of disposal of the representation has not been mentioned in the counter affidavit. However, learned Additional Public Prosecutor, on instructions at the Bar placed before us a list of dates and a reproduction of the same is as follows:

Representation dated	-	18.11.2022
Representation received date	-	23.11.2022
Remarks called on	-	25.11.2022
Reminder date	-	12.01.2023
Remarks received on	-	23.01.2023
File submitted on	-	24.01.2023
Under Secretary dealt with on	-	24.01.2023
Deputy Secretary dealt with on	-	24.01.2023
Additional Chief Secretary		
dealt with on	-	25.01.2023
Secretary Law dealt with on	-	27.01.2023
Minister for Food and Civil Supplies		
dealt with on	-	27.01.2023
Rejection Letter prepared on	-	27.01.2023



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Rejection Letter sent to the detenu
on [through e-mail] - 27.01.2023

Government Holidays Falls on :

26.11.2022, 27.11.2022, 03.12.2022, 04.12.2022, 10.12.2022,
11.12.2022, 17.12.2022, 18.12.2022, 24.12.2022, 25.12.2022,
31.12.2022, 01.01.2023, 07.01.2023, 08.01.2023, 14.01.2023,
15.01.2023, 16.01.2023, 17.01.2023, 21.01.2023, 22.01.2023
and 26.01.2023

Delay Points:

Representation received on	-	23.11.2022
Reply sent to the Detenu	-	27.01.2023
Total Delay	-	65 Days
Government Holidays	-	21 days
Delay in considering representation	-	44 days

A careful perusal of the above makes it clear that there has been delay of 44 days in considering the petitioner's representation dated 18.11.2022 and that the rejection was ultimately sent to the detenu only on 27.01.2023. The aforementioned list of dates makes it clear that remarks were called on 25.11.2022 and reminder had to be sent but that reminder itself was sent only on 12.01.2023.

6.Considering the representation of the detenu qua the detention order



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is a constitutional guarantee ingrained in Clause (5) of Article 22 of the Constitution of India. Therefore, it is Sanctus. Delay in considering the representation is fatal to the impugned detention order and unexplained delay in disposal of the representation is a breach of the constitutional guarantee and it renders continued detention impermissible and illegal. The lead case law on this point is celebrated case of ***K.M.Abdulla Kunhi and another vs. Union of India and others*** reported in ***1991 (1) SC 476*** and the most relevant paragraph qua paragraph No.12 is as follows:

'12.....It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that



there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.'

7.The aforementioned ***K.M.Abdulla Kunhi's*** case has been followed in a long line of case laws and particularly in ***Rajammal vs. State of Tamil Nadu*** reported in ***1999 (1) SCC 417*** which arose from Tamil Nadu. In ***Rajammal's*** case the Hon'ble Supreme court held that delay in considering representation on account of indifference or lapse, is clearly fatal to the impugned order and the test is how the delay is explained and not the length of the delay. We carefully considered the chronicle [list of dates] and as already alluded to supra, we have no difficulty in coming to the conclusion that the delay has not been explained much less well explained. Therefore, as there is an infraction of the constitutional imperative, more particularly, constitutional imperative ingrained in Clause (5) of Article 22 of the Constitution of India, we have no difficulty in saying that the impugned detention order deserves to be dislodged.



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8.Ergo, the sequitur is captioned HCP is allowed and the detention order dated 26.09.2022 bearing reference Cr.M.P.34/Black Marketer/2022-C1 is set aside and the detenu Thiru.Dhanapal, aged 49 years, son of Thiru.Krishnan is directed to be set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
14.02.2023

Index:Yes/No

Neutral Citation : Yes/No

cse

Note: The Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.



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To
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1. The Additional Secretary to Government
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Food and Public Distribution
[Department of Consumer Affairs]
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New Delhi – 110 001.
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7. The Public Prosecutor,
High Court of Madras,
Chennai – 104.



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

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