



WEB COPY



H.C.P.No.2578 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

H.C.P.No.2578 of 2022

Venkatesan
S/o.Namachivayam

.. 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 the Government
Food and Consumer Protection Department
IInd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai-600 009.
3. The District Collector and
District Magistrate of Vellore
Vellore District.
4. The Superintendent of Police
Vellore District
Vellore.

Page Nos.1/8



H.C.P.No.2578 of 2022

WEB COPY

5. The Superintendent of Prison
Central Prison
Vellore, Vellore District.

6. The Inspector of Police
Civil Supply Crime Investigation Department
Vellore, Vellore District.

.. 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 in his office ref.C3.D.O.No.117/2022 dated 17.11.2022 against the petitioner's son Thiru.Rajesh, s/o.Venkatesan aged about 41 years at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.E.Kannadasan
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by father of detenu assailing a 'preventive detention order dated 17.11.2022 bearing reference C3.D.O.No.117/2022' [hereinafter 'impugned



H.C.P.No.2578 of 2022

detention order' for the sake of convenience and brevity]. To be noted, sixth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third respondent.

2. 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. There is one adverse case and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.241 of 2022 on the file of Civil Supplies CID, Vellore for alleged offences under Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act, 1955. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



H.C.P.No.2578 of 2022

4. Mr.E.Kannadasan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5. Though several grounds have been urged in the support affidavit, learned counsel for petitioner at the hearing exhorted one point in his campaign against the impugned detention order and that one point turns on delay in considering a representation sent qua impugned detention order.

6. Responding to the aforementioned submission, learned State Additional Public Prosecutor submitted to the contrary and placed before us a list of dates and the details of the same are as follows:

<i>'Representation dated</i>	..	<i>14.12.2022</i>
<i>Representation received date</i>	..	<i>20.12.2022</i>
<i>Remarks called on</i>	..	<i>22.12.2022</i>
<i>Reminder date</i>	..	<i>.....</i>
<i>Remarks received on</i>	..	<i>27.01.2023</i>
<i>File submitted on</i>	..	<i>31.01.2023</i>
<i>Under Secretary dealt with on</i>	..	<i>01.02.2023</i>
<i>Deputy Secretary dealt with on</i>	..	<i>01.02.2023</i>



H.C.P.No.2578 of 2022

Principal Secretary dealt with on .. *01.02.2023*
Secretary Law dealt with on .. *03.02.2023*
Minister for Food and Civil supplies
dealt with on .. *06.02.2023*
Rejection letter prepared on .. *07.02.2023*
Rejection letter sent to the detenu on
(through e-mail) .. *07.02.2023*

Government Holidays Falls on:

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, 26.01.2023,
28.01.2023, 29.01.2023, 04.02.2023 and 05.02.2023'

7. We find that even if the intervening 17 public/Government holidays 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, 26.01.2023, 28.01.2023, 29.01.2023, 04.02.2023 and 05.02.2023 are excluded, there is a delay of 25 days in considering the representation. We make it clear that the delay in considering the representation point in challenges to preventive detention orders cannot be decided quantitatively. It has to be decided qualitatively based on the facts, circumstances and the trajectory the representation has taken, in other words, it has to be decided



H.C.P.No.2578 of 2022

on case to case basis. In the case on hand, we adopt such an approach and we find that 25 days delay vitiates the impugned detention order. We also hasten to make it clear that there can be no straight jacket formula in terms of number of days as regards this point is concerned and therefore, this order will not serve as precedent in all and every case.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.11.2022 bearing reference C3.D.O.No.117/2022 made by the third respondent is set aside and the detenu Thiru.Rajesh, aged 41 years, son of Thiru.Venkatesan, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

23.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

Page Nos.6/8



H.C.P.No.2578 of 2022

WEB COPY

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 the Government
Food and Consumer Protection Department
IInd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai-600 009.
3. The District Collector and
District Magistrate of Vellore
Vellore District.
4. The Superintendent of Police
Vellore District
Vellore.
5. The Superintendent of Prison
Central Prison
Vellore, Vellore District.
6. The Inspector of Police
Civil Supply Crime Investigation Department
Vellore, Vellore District.



WEB COPY



H.C.P.No.2578 of 2022

**M.SUNDAR, J.,
and
N.ANAND VENKATESH, J.,**

mk

H.C.P.No.2578 of 2022

23.03.2023

Page Nos.8/8