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H.C.P.(MD) No.38 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.05.2023

CORAM:

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

H.C.P.(MD) No.38 of 2023

Gayathri

... Petitioner

-vs-

1.Additional Secretary to Government of India
Department of Consumer Affairs
Food and Consumer Affairs Department
Room No.270, Krishibhavan
New Delhi-110 001

2.The Secretary to the Government
Co-operation Food and
Consumer Protection Department
Namakkal Kavignar Maligai II Floor
Secretariat, Chennai-600 009

3.The District Collector and
District Magistrate
Tirunelveli District

4.The Superintendent
Central Prison
Palayamkottai

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order in M.H.S.Confdl No.207/2022, dated 23.11.2022, on the file of the third respondent and quash the same and direct the respondents herein to produce the body of the petitioner's husband Thangaraj, aged about 29 years, son of Perumal, now confined in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.Muthumalai

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu viz., Thangaraj, aged about 29 years, son of Perumal. The detenu has been detained by the third respondent by his order in M.H.S.Confdl No.207/2022, dated 23.11.2022, holding him to be a "Black Marketeer", as contemplated under Section 3(2)(a) read with Section 3(1) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The said order is under challenge in this habeas corpus petition.



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2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing 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 a 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. The learned Additional Public Prosecutor strongly opposed the habeas corpus petition by filing his counter. He would submit that though there was delay in 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.



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5. The Detention Order in question was passed on 23.11.2022. The petitioner made a representation on 09.12.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.12.2022. The remarks were duly received on 12.01.2023. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 27.01.2023.

6. It is the contention of the petitioner that there was a delay of 27 days in submitting the remarks by the Detaining Authority, of which 08 days were Government holidays and hence there was an inordinate delay of 19 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.01.2023 and there was a delay of 07 days in submitting the file to the Under Secretary of the Co-operation, Food and Consumer Protection Department, of which 04 days were Government holidays, hence, there was a delay of 03 days in submitting the file to the Under Secretary.

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



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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*

[1980 (2) SCC 321], the Honourable Supreme Court has held that any 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 19 days in submitting the remarks by the Detaining Authority and unexplained delay of 03 days in submitting the file to the Under Secretary of Co-operation, Food and Consumer Protection Department. The impugned detention order is, therefore, liable to be quashed.



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11. In the result, the Habeas Corpus Petition is allowed. The order of detention passed by the third respondent, in M.H.S.Confdl No. 207/2022, dated 23.11.2022, is set aside. Consequently, the detenu, namely, Thangaraj, aged about 29 years, son of Perumal, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

[M.D.I., J.] [R.V., J.]

04.05.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

krk / abr

To

1.The Additional Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibhavan,
New Delhi-110 001.

2.The Secretary to the Government,
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- 3.The District Collector and
District Magistrate,
Tirunelveli District.
- 4.The Superintendent,
Central Prison,
Palayamkottai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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