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H.C.P.No.40 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.40 of 2024

Pooncholai

... Petitioner/Wife of detenu

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,
2nd Floor, Namakkal Kavingnar Maaligai,
Secretariat, Chennai 600 009.
3. The District Collector and District Magistrate of
Krishnagiri,
Krishnagiri District.
4. The Superintendent of Police,
Krishnagiri District, Krishnagiri.



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

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 3rd respondent in his office ref S.C.No.24/2023(SC) dated 21.12.2023 against the petitioner's husband Sathiyamoorthi, S/o. Veerasamy, aged about 34 years, at Central Prison, Salem, Salem 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.E. Raj Thilak
Additional Public Prosecutor
Assisted by Aravind.C

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The Petitioner, wife of the detenu has filed this Petition challenging the order of detention passed by the 3rd respondent against her husband in S.C. No.24/2023 (CS) dated 21.12.2023, branding the detenu as a "BLACK



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MARKETEER" as contemplated under the provision of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980).

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu, dated 05.01.2024. According to the learned counsel for the petitioner, the representation dated 05.01.2024, was received by the Government belatedly on 10.01.2024 and thereafter the file has been dealt with by the Deputy Secretary only on 15.02.2024, i.e. nearly after 36 days, and by the Minister concerned on 20.02.2024 and the Rejection Letter was prepared and sent on 23.02.2024. It is the further submission of the learned counsel that this inordinate delay in considering the representation remains unexplained and the same vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***



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3. Heard the learned Additional Public Prosecutor appearing for the respondents.

4. As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that, the representation of the detenu, dated 05.01.2024, which was received by the Government on 10.01.2024, was dealt with by the Minister concerned only on 20.02.2024, i.e. nearly after 41 days of its submission, and the Rejection Letter was prepared on 23.02.2024. Thus, we find there is a considerable delay of Twenty eight days [after excluding the intervening Saturday and Sunday and Public Holidays [13.01.2024, 14.01.2024, 15.01.2024, 16.01.2024, 17.01.2024, 20.01.2024, 21.01.2024, 25.01.2024, 26.01.2024, 27.01.2024, 28.01.2024, 03.02.2024, 04.02.2024, 10.02.2024, 11.02.2024, 17.02.2024 and 18.02.2024] in considering the representation of the petitioner. This inordinate delay in considering the detenu's representation remain unexplained.



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5. It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the inordinate delay. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

6. In the judgment of the Hon'ble Supreme Court in ***Rajammal's case*** (*cited supra*), it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be " in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."



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As per the dictum laid down by the Supreme Court in above cited **Rajammal's case**, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay from 11.01.2024 to 23.02.2024, has not been properly explained at all.

7. Further, in a recent decision in **Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC**, the Hon'ble Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

8. In the light of the above fact and law, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu.



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9. Accordingly, the Habeas Corpus Petition is allowed and the detention order in S.C. No.24/2023 (CS) dated 21.12.2023, passed by the 3rd respondent is quashed. The detenu, namely Sathiyamoorthi, aged about 34 years, S/o. Veerasamy, is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

**[M.S.R., J] [S.M., J]
18.03.2024**

bga

Index : Yes / No

Neutral Citation : Yes / No



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7. The Public Prosecutor
High Court, Madras.
8. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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