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HCP.No.161 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.161 of 2024

Gokulraj

... 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
Department of Co-operation
Food and Consumer Protection Department
2nd Floor, Namakkal Kavignar Maligai
Secretariat, Chennai – 600 009

3.The District Collector and District Magistrate
Vellore District
Vellore

4.The Superintendent of Police
Vellore District, Vellore

5.The Superintendent of Prison
Special Prison for Women, Vellore



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6.The Inspector of Police
Civil Supplies CID Police Station
Vellore & District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, call for the records in connection with the order of detention passed by the third respondent on 10.01.2024 in C3.D.O.No.04/2024 against the petitioner's husband Ravichandran, Male aged 42 years, S/o.Ayyamperumal, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind

ORDER

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

The petitioner herein, who is the son of the detenu namely Jothi, aged about 43 years, W/o.Sekar, has come forward with this petition challenging the detention order passed by the third respondent dated 17.01.2024 slapped on his mother, branding her as "Black Marketeer"



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under the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner focused mainly on the ground that there is an unexplained delay in considering the representation of the petitioner, dated 23.01.2024. According to the learned counsel for the petitioner, though the representation is dated 23.01.2024, the same has been received by the Government only on 05.02.2024; the file has been dealt with by the Secretary Law on 01.03.2024 and the Minister concerned dealt with the file only on 04.03.2024 and the Rejection Letter was prepared on 04.03.2024 and sent to the detenu on 05.03.2024. It is the further submission of the learned counsel that the delay of 21 days 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



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Rajammal Vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.

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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 petitioner is dated 23.01.2024, which was received by the Government on 05.02.2024 and further, the Minister concerned had dealt with the file of the detenu only on 04.03.2024 and the Rejection Letter was sent to the detenu on 05.03.2024. Thus, we find there is a considerable delay of 21 days in considering the representation of the petitioner. This delay of 21 days in considering the petitioner's representation remains unexplained.

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 delay of 21 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.



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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."

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 of 21 days 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



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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 discussion, 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 petitioner.

9. Accordingly, the detention order passed by the third respondent on 17.01.2024 in C3.D.O.No.04/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue viz., Jothi, aged about 43 years, W/o.Sekar, is directed to be set at liberty forthwith, unless her confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

22.04.2024

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7.The Public Prosecutor
High Court of Madras
Chennai 600 104



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