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HCP.No.483 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

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

H.C.P.No.483 of 2024

Jothi

... Petitioner

Vs.

1.The Additional Secretary to
Government of India
Ministry of Consumer Affairs
Food and Public Distribution
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
II Floor, Namakkal Kavignar Maligai
Secretariat, Chennai – 600 009

3.The Commissioner of Police
The Greater Chennai City
Office of the Commissioner of Police
Vepery, Chennai 600 007

4.The Superintendent of Prison
Central Prison, Puzhal, Chennai 600 066



HCP.No.483 of 2024

5.The Inspector of Police
Civil Supplies CID
Chennai North Unit
Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, call for the records relating to the detention order in Memo No.01/BLACK MARKETING ACT/ 2024, dated 13.02.2024 passed by the 3rd respondent under Section 3(1) r/w. 3(2) (b) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) and set aside the same and direct the respondents to produce the petitioner's son VADIVEL S/o.Arumugam, aged about 32 years, the detenu, now confined in Central Prison-II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner	: Mr.D.Gopikrishnan
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 mother of the detenu namely



HCP.No.483 of 2024

WEB COPY

Vadivel, aged about 32 years, S/o.Arumugam, has come forward with this petition challenging the detention order passed by the third respondent dated 13.02.2024 slapped on her son, branding him as "Black Marketeer" 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 29.02.2024. According to the learned counsel for the petitioner, though the representation is dated 29.02.2024, the same has been received by the Government only on 04.03.2024; the file has been dealt with by the Secretary Law on 02.04.2024 and the Minister concerned dealt with the file only on 03.04.2024 and the Rejection Letter was prepared on 04.04.2024 and sent through e-mail to the detenu on 04.04.2024. It is the further submission of the learned counsel that the



HCP.No.483 of 2024

WEB COPY

delay of 22 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 ***Rajammal Vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***

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 29.02.2024, which was received by the Government on 04.03.2024 and further, the Minister concerned had dealt with the file of the detenu only on 03.04.2024 and the Rejection Letter was sent through e-mail to the detenu on 04.04.2024. Thus, we find there is a considerable delay of 22 days in considering the representation of the petitioner. This delay of 22 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



HCP.No.483 of 2024

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 22 days. 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."

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



HCP.No.483 of 2024

WEB COPY

by the authorities concerned. But, here the inordinate delay of 22 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 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 13.02.2024 in No.01/2024, is hereby set aside and the Habeas Corpus



HCP.No.483 of 2024

WEB COPY

Petition is allowed. The detainee viz., Vadivel, aged about 32 years, S/o.Arumugam, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]
13.06.2024

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Index : Yes / No
Neutral Citation

To

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6.The Public Prosecutor,
High Court of Madras,
Chennai 600 104

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