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H.C.P.No.694 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

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

H.C.P.No.694 of 2024

Jaseena

.. Petitioner/
Wife of the detenuue
Versus

1. The Secretary to Government,
Co-operation Food and Consumer Production
Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.
3. The Addl. Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.
4. The Superintendent of Prison,
Central Prison - Coimbatore,



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Coimbatore District.

5. State rep. by its
The Inspector of Police,
CIVIL SUPPLY - CID - Pollachi,
Coimbatore District.
(Crime No.57/2024) .. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 14.03.2024 on the file of the second respondent herein made in proceedings Memo C.No.01/PBMSEC. Act/IS/2024, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely M.Habeeb Rahuman @ Abi, S/o.Mohamed Ismail, aged 47 years before this Court and set the petitioner's husband at liberty from detention, now petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

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

The petitioner, who is the wife of the detenue M.Habeeb Rahman @ Abi, S/o.Mohamed Ismail, aged 47 years, has come forward with this



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petition challenging the detention order passed by the second respondent dated 14.03.2024 slapped on her husband, branding him as "Black Marketeer" under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Central Act No.7 of 1980].

2. Heard the learned counsel for the petitioner and 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 25.03.2024. According to the learned counsel for the petitioner, though the representation is dated 25.03.2024, the same has been received by the Government only on 27.03.2024; the file has been dealt with by the Joint Secretary on 16.04.2024 and the Minister concerned dealt with the file only on 22.04.2024 and the Rejection Letter was prepared on 22.04.2024 and sent to the detinue on 22.04.2024. It is the further submission of the learned counsel that the delay of 15 days in considering the representation remains unexplained and the same vitiates the detention order. In support of



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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 25.03.2024, which was received by the Government on 27.03.2024 and further, the Minister concerned had dealt with the file of the detainee only on 22.04.2024 and the Rejection Letter was sent to the detainee on 22.04.2024. Thus, we find there is a considerable delay of 15 days in considering the representation of the petitioner. This delay of 15 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 15 days.



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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 by the authorities concerned. But, here the inordinate delay of 15 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



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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 detainee, 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, in C.No.01/PBMMSEC Act/IS/2024, dated 14.03.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detainee viz., M.Habeeb Rahuman @ Abi, S/o.Mohamed Ismail, aged 47 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
24.07.2024

Index : yes/no
Speaking order/Non-speaking order



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Neutral Citation : yes/no

grs

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Note :- Registry shall forthwith return the booklet containing the materials, on which, the Detaining Authority has placed reliance, to the petitioner/counsel for the petitioner with due acknowledgment.

To

1. The Secretary to Government,
Co-operation Food and Consumer Production
Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.
3. The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
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4. The Superintendent of Prison,
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5. The Inspector of Police,
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Coimbatore District.
(Crime No.57/2024)

6. The Public Prosecutor,
High Court of Madras.



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

grs

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