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H.C.P.No.881 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.881 of 2024

Asibath Misha Begum

... Petitioner / wife of the detenue

Vs.

1.The Additional Chief Secretary to Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai-9

2.The District Collector and
District Magistrate, Villupuram District,
Villupuram.

3.The Secretary to the Government,
Ministry of Consumer Affairs,
Food and Public Distribution (department of
Consumer Affairs) Room No.270,
Kirish Bhavan, New Delhi-110 001.

4.The Inspector of Police,
Civil Supplies CID,
Villupuram.

5.The Superintendent of Police,
Villupuram District.



H.C.P.No.881 of 2024

6. The Superintendent of Prison,
Central Prison, Cuddalore.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 03.04.2024 in RC No.C2/10/2024 against the petitioner's husband Mubarak Ali, son of Arapsha, aged about 49 years, 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.V.Parthiban

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 detenu Mubarak Ali, son of Arapsha, aged about 49 years, confined at Central Prison, Cuddalore, has come forward with this petition challenging the detention order passed by the second respondent dated 03.04.2024 slapped on her husband, branding him as "Black Marketeer" under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,



H.C.P.No.881 of 2024

1980 [Central Act No.7 of 1980].

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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 11.04.2024. According to the learned counsel for the petitioner, though the representation is dated 11.04.2024, the same has been received by the Government only on 22.04.2024; the file has been dealt with by the Joint Secretary on 16.05.2024 and the Minister concerned dealt with the file only on 21.05.2024 and the Rejection Letter was prepared on 21.05.2024 and sent to the detenu on 22.05.2024. 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 ***Rajammal Vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***



H.C.P.No.881 of 2024

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 11.04.2024, which was received by the Government on 22.04.2024 and further, the Minister concerned had dealt with the file of the detenu only on 21.05.2024 and the Rejection Letter was sent to the detenu on 22.05.2024. 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.

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



WEB COPY



H.C.P.No.881 of 2024

"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 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



H.C.P.No.881 of 2024

and without any avoidable delay.

WEB COPY

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 Rc.No.C2/10/2024, dated 03.04.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mubarak Ali, son of Arapsha, aged about 49 years, confined at Central Prison, Cuddalore, 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]

30.07.2024

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

Anu

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.



H.C.P.No.881 of 2024

To
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5.The Superintendent of Police,
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6.The Superintendent of Prison,
Central Prison, Cuddalore.

7.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

8.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.881 of 2024

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H.C.P.No.881 of 2024

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