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H.C.P.No.2621 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

CORAM:

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

H.C.P.No.2621 of 2024

Thangadurai

... Petitioner

Vs.

1.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
Room No.270, Krishi Bhawan,
New Delhi – 110 001.

2.The Secretary to the Government,
Co-operation Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai – 600 009.

3.The District Collector and District Magistrate,
Coimbatore District.

4.The Superintendent of Prison,
Central Prison, Coimbatore - 18.

5.The Inspector of Police,
Civil Supplies Criminal Investigation Department,
Coimbatore Unit.

... Respondents



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PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the third respondent dated 18.09.2024 in Cr.M.P.No.51/BM/2024 against the petitioner's son Murugalingam @ Murugan, Male, aged 39 years, S/o.Thangadurai, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondent to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Selvakumar

For R2 to 5 : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

*(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)*

The order of detention passed by the third respondent in proceedings in Cr.MP.No.51/BM/2024 dated 18.09.2024, is sought to be quashed in the present Habeas Corpus Petition.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents 2 to 5.



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3. The order of detention sought to be assailed and the fact as narrated would reveal that, there is a delay of 28 days in considering the representation. The delay in considering the representation and the period during which the detenu was under detention would be construed as violation of the Constitutional mandatory under Article 22 of the Constitution of India and thus, the ground of delay in considering the representation became fatal in the case of preventive detention.

4. 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.

5. In the judgment of the Hon'ble Supreme Court in the case of '*Rajammal Vs. State of Tamil Nadu*', reported in '*(1999) 1 SCC 417*', it



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has been held as follows:

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“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.”

6. 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 has not been properly explained at all.

7. Further, in a recent decision in ***'Ummu Sabeena Vs. State of Kerala'*** reported in ***'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



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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 detenu.

9. Accordingly, the detention order passed by the third respondent, in Cr.MP.No.51/BM/2024 dated 18.09.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Murugalingam @ Murugan, S/o.Thangadurai, aged 39 years, (who is presently under going detention in the Central Prison, Coimbatore), is directed to be set at liberty forthwith, unless he is required in connection with any other case.

(S.M.S, J.)

(M.J.R, J.)

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Index: Yes/No

Neutral Citation: Yes/No

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