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H.C.P.No.2149 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2149 of 2023

Tmt.Jamila Begam

... Petitioner

Vs.

1. The Principal Secretary to the Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai-9.
2. The District Collector and
District Magistrate, Cuddalore District,
Cuddalore.
3. The Secretary to the Government,
Ministry of Consumer Affairs,
Food and Public Distribution (Department
of Consumer Affairs),
Room No.270, Krish Bhavan,
New Delhi-110 001.
4. The Inspector of Police,
Civil Supplies CID,
Cuddalore.
5. The Superintendent of Police,



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Cuddalore District.

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 relating to the detention order passed by the second respondent dated 19.10.2023 in No.C3/D.O/65/2023 against the petitioner's husband Abuthagir @ Syed Abuthagir, S/o Mubarak Ali, aged about 31 years, 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.V.Parthiban

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

ORDER

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

The petitioner, who is the wife of the detenu Abuthagir @ Syed Abuthagir, S/o.Mubarak Ali, aged 31 years, has come forward with this petition challenging the detention order passed by the second respondent dated 19.10.2023 slapped on her husband, branding him as "Black



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Marketeer" under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (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 focussed mainly on the ground that there is an unexplained delay in considering the representation of the petitioner, dated 25.10.2023. According to the learned counsel for the petitioner, though the representation is dated 25.10.2023, the same has been received by the Government only on 02.11.2023; the file has been dealt with by the Deputy Secretary on 29.12.2023 and the Minister concerned dealt with the file only on 05.01.2024 and the Rejection Letter was prepared on 05.01.2024 and sent to the detenu on 05.01.2024. It is the further submission of the learned counsel that the delay of 44 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 25.10.2023, which was received by the Government on 02.11.2023 and further, the Minister concerned had dealt with the file of the detenu only on 05.01.2024 and the Rejection Letter was sent to the detenu on 05.01.2024. Thus, we find there is a considerable delay of 44 days in considering the representation of the petitioner. This delay of 44 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 44 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 by the authorities concerned. But, here the inordinate delay of 4 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',



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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 second respondent, in No.C3/D.O/65/2023, dated 19.10.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Abuthagir @ Syed Abuthagir, S/o.Mubarak Ali, aged 31 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]
22.01.2024

sr
Index: Yes / No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes / No



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