



H.C.P.No.2538 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2538 of 2023

Dhilsath Begum

... Petitioner

Vs.

1.The Secretary to the Government,
Department Home, Prohibition and Excise
Secretariat, Fort St. George, Chennai - 600 009.

2.The Commissioner of Police / Detaining Authority
Office of the Commissioner of Police,
Salem City.

3.The Superintendent
Central Prison, Salem.

4.The Inspector of Police,
Salem C.S.CID, Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records in connection with the Detention passed by the second respondent dated 28.08.2023 in C.M.P.



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No.1/Black Marketer/Salem City/2023 against the petitioner/detenu Sadiq Basha, Male aged 54 years, S/o. Abdul Rahman, who is confined at Central Prison, Salem, and set aside the same and direct the respondents to produce the detenu, before the Hon'ble Court and set him at liberty.

For petitioner : Mr.A. Mohammed Feroz

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

ORDER

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

The Petitioner, wife of the detenu has filed this Petition challenging the order of detention passed by the 2nd respondent against her husband, in C.M.P. No.1/Black Marketer/Salem City/2023 dated 28.08.2023, branding the detenu as a "Black Marketer" contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).



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2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined his arguments only to the ground of delay in considering the representation of the detenu, dated 25.09.2023. According to the learned counsel for the petitioner, though the representation dated 25.09.2023, was received by the Government on 27.09.2023, the file has been dealt with by the Deputy Secretary only on 06.10.2023 and by the Minister concerned on 09.10.2023 and the Rejection Letter prepared and sent on the same day to the detenu. It is the further submission of the learned counsel that this inordinate delay 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.***

3. Heard the learned Additional Public Prosecutor appearing for the respondents.

4. As per the submission of the learned counsel for the petitioner and



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on perusal of the records, we find that, the representation of the detenu, dated 25.09.2023, which was received by the Government on 27.09.2023, was dealt with by the Minister concerned only on 09.10.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a considerable delay of six days [after excluding the intervening Saturday and Sunday and Public Holidays [28.09.2023, 30.09.2023, 01.10.2023, 02.10.2023, 07.10.2023 and 08.10.2023] in considering the representation of the petitioner. This inordinate delay in considering the detenu's representation remain 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 inordinate delay. 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***



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(*cited supra*), it 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."

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 from 28.09.2023 to 09.10.2023, 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



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be considered and disposed of with a sense of urgency and without any avoidable delay.

8. In the light of the above fact and law, 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 habeas corpus petition is allowed and the detention order in C.M.P. No.1/Black Marketer/Salem City/2023 dated 28.08.2023, passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

**[M.S.R., J] [S.M., J]
08.02.2024**

bga

Index : Yes / No

Neutral Citation : Yes / No



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To

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5. The Public Prosecutor
High Court, Madras.
6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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