



H.C.P.(MD) No.247 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

H.C.P.(MD) No.247 of 2024

V.Radha

... Petitioner

-VS-

- 1.The Additional Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibhavan,
New Delhi-110 001.
- 2.The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Namakkal Kavignar Maaligai,
Secretariat,
Chennai-600 009.
- 3.The District Magistrate and District Collector,
Kanniyakumari District,
Nagercoil.



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4. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in P.D.No.56 of 2023, dated 05.12.2023 on the file of the third respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Ajith, aged about 24 years, S/o.Lawrence, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the mother of the detenu viz., Ajith, son of Lawrence, aged about 24 years. The detenu has been detained by the third respondent by his order in P.D.No.56/2023, dated 05.12.2023 holding him to be a



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"Black Marketeer", as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). The said order is under challenge in this habeas corpus petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the habeas corpus petition, learned counsel for the petitioner focused mainly on the ground that the respondents have not considered the representation of the petitioner, dated 05.02.2024. According to the learned counsel for the petitioner, though the representation is dated 05.02.2024, the same was received by the Government on 16.02.2024, thereafter the respondents have not passed any orders on the representation. In support of his contention, learned counsel for the petitioner relied on the Judgment of the Honourable Supreme Court in *Rajammal vs. State of Tamil Nadu*, reported in (1999) 1 SCC 417.



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4. Learned Additional Public Prosecutor, on instructions, submitted that after satisfying with the materials placed by the Sponsoring Authority, the Detaining Authority has passed the impugned detention order and there is no illegality or infirmity in the detention order. It is also stated that even if there is any delay in disposal of the representation, it has not caused any prejudice to the rights of the detenu and hence, prayed for dismissal of the habeas corpus petition

5. 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 dated 05.02.2024 has been received by the Government on 16.02.2024, thereafter the respondents have not passed any orders on the representation. As per the proforma submitted the by the learned Additional Public Prosecutor, in Column No.10 to 18 has not at all been considered so far.

6. 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 or non-consideration of the representation would be a breach of the constitutional imperative and it



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would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for non-considering the representation.

7. In the above cited decision of the Honourable Supreme Court in ***Rajammal's*** case, 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."

Whereas, in this case, strangely, the representation of the petitioner has not been considered by the respondents, which vitiates the detention order.

8. Further, in a recent decision in ***Ummu Sabeena vs. State of Kerala-2011 STPL (Web) 999 SC***, the Honourable Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on



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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 and without any avoidable delay.

9. In the light of the above discussion, we have no hesitation in quashing the order of detention on the ground of non-consideration of the representation.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.56/2023, dated 05.12.2023, passed by the third respondent is set aside. The detenu, viz., Ajith, aged about 24 years, son of Lawrence, is directed to be released forthwith unless his detention is required in connection with any other case.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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[A.D.J.C., J.] [K.R.S., J.]
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- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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