



H.C.P.(MD) No.799 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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M.Durgadevi

... 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 Collector and District Magistrate,
Tirunelveli District
Tirunelveli.
 4. The Superintendent of Prison
Central Prison
Palayamkottai, Tirunelveli District
- ... Respondents**



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records connected with the detention order passed in M.H.S. Confdl. No.94 of 2024 dated 30.05.2024 on the file of the third respondent herein and quash the same and direct the respondents to produce the detenue or body of the detenue namely the petitioner's husband ie., Muthukumar aged about 40 years, S/o.Esakki now detained at the Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N. Pragalathan
For R-1 : Mr.Alaguram Jothi
For RRs2 to R4 : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

The petitioner is the wife of the detenu viz., Muthukumar , son of Esakki, aged about 40 years. The detenu has been detained by the third respondent by his order in M.H.S. Confdl. No.94 of 2024 dated 30.05.2024



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holding him to be a "Black marketer", as contemplated under the provisions of Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.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 there is an unexplained delay in considering the representation of the petitioner, dated 01.07.2024. According to the learned counsel for the petitioner, though the representation is dated 01.07.2024, the same was received by the Government on 04.07.2024 and the rejection letter was sent to the detenu on 14.08.2024. There is a delay of 28 days in Column Nos.6 to 17 of the Proforma in considering the petitioner's representation. The said delay of 28 days in considering the representation remains unexplained and the same vitiates the impugned detention.



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order. 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***.

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 is dated 01.07.2024, which was received by the Government on 04.07.2024 and the rejection letter was sent to the detenu on 21.08.2024. As per the proforma submitted by the learned Additional Public Prosecutor, there is a delay of 28 days in Column Nos.6 to 17 in considering the representation of the petitioner and we find that the said delay remains unexplained.



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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 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 28 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

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."



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8. 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, in the instant case, the inordinate delay of 28 days has not been properly explained.

9. 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 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.

10. 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.



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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S. Confdl. No.94 of 2024 dated 30.05.2024 passed by the third respondent is set aside. The detenu, viz., Muthukumar, son of Esakki, aged about 40 years is directed to be released forthwith unless his detention is required in connection with any other case.

12. In this case the detention order had been passed categorizing the detenu as black marketer. There are two adverse cases against him. In the ground case it had been alleged that he had been involved in the smuggling of 9440kgs of PDS rice. The respondent had taken care to ensure that if representation is given which is addressed without delay. We find that it had addressed with a delay of 28 days. We hope that the delay is not deliberate, but it requires examining the stage at which the delay had occurred. In this connection the second respondent/ The Secretary to Government, Co-operation, Food and Consumer Protection Department, Namakkal Kavignar Maaligai, Secretariat, Chennai -600 009 is directed to examine and fix responsibility on the specific official owing to whom the enormous delay of 28 days had occurred and initiate necessary departmental proceedings. Since we are confident that the Secretary to



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Government would act on our orders, we are not listing the matter again but if he does not it only reflect scant respect for rule of law.

[C.V.K., J.] [R.P., J.]
01.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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,
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5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise, Fort St. George, Chennai- 600 009



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