



HCP(MD)No.1390 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.04.2024

CORAM

**THE HON'BLE MR JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HON'BLE MR JUSTICE K.RAJASEKAR**

H.C.P.(MD)No.1390 of 2023

Vilvajothe

.. Petitioner

Vs.

1.The Secretary to Government
Ministry of Consumer Affairs,
Food and Public Distribution System
Room No.270 Krishi Bhavan
New Delhi. 110001.

2.The Additional Chief Secretary to Government
Cooperation, Food and Consumer Protection Department
Secretariat, Chennai 600 009.

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

4.The Superintendent of Prison,
Central Prison,
Madurai District.

.. Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records pertaining to the impugned order passed by the 3rd respondent made



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in proceedings in CMP NO.01/2023 (CS) dated 24.10.2023 in detaining the detenu under the prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) as a Black Marketeer and quash the same and direct the respondents to produce the detenu namely Kathirvel son of Kumaresan male aged 43 years, who is detained at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.A.Balaji

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of
India for R1
Mr.A.Thiruvadikkumar for
R2 to R4
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

This habeas corpus petition has been filed by the wife of the detenu, namely, Kathirvel, son of Kathiresan, aged about 43 years, against the detention order passed by the second respondent, in CMP NO.01/2023 (CS) dated 24.10.2023 branding him as “Black Marketeer” as contemplated under Section 3(1) read with Section 3(2)(ia) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).



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2. Though several grounds have been raised challenging the impugned detention order, Mr.A.Balaji, learned counsel for the petitioner, mainly contends that there is enormous delay in considering the petitioner's representation, which would vitiate the impugned order of detention as per Articles 21 and 22 of the Constitution of India. According to the learned counsel, there is no material to arrive at the subjective satisfaction, which shows lack of application of mind on the part of the Detaining Authority, while passing the impugned order of detention.

3. Per contra, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, contended that the detenu in this case is having previous cases and in the ground case, he transported the PDS rice weighing 160000 kgs in 320 bags. Only after satisfying with the materials furnished by the Sponsoring Authority and in order to prevent the detenu from indulging in similar activities in future, which are prejudicial to the maintenance of public order, the impugned detention order has been passed by the Detaining Authority and there is no illegality or irregularity in the impugned order of detention warranting interference of this Court.



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4. We have heard the rival submissions and perused the materials placed on record.

5. It is seen from the proforma furnished by the learned Additional Public Prosecutor that the representation of the petitioner was received on 09.11.2023. Remarks were called for on 10.11.2023 and it was received on 17.11.2023. The Deputy Secretary dealt with the matter on 24.11.2023. The concerned Minister dealt with the matter on 27.11.2023 and the representation came to be rejected on 28.11.2023. It is seen that in between 17.11.2023 and 28.11.2023, there was a delay of four days, after excluding the Government Holidays of six days, in considering the petitioner's representation.

6. At this juncture, it is useful to refer the decision of the Apex Court in the case of ***Rajammal vs. State of Tamil Nadu and another***, reported in ***1999 (1) SCC 417***, wherein the Apex Court has observed and held that it is for the Authority concerned to explain the delay, if any, in disposal of the representation and if any delay was caused on account of any indifference or



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lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

7. In the case on hand, as stated supra, the delay of four days have not been properly explained by the respondents. Hence, in our considered view, the detention order is liable to be set aside on the grounds as stated above by following the decision of the Apex Court referred supra.

8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in CMP NO.01/2023 (CS) dated 24.10.2023 is set aside. Consequently, the detenu, namely, Kathirvel, son of Kathiresan, aged about 43 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

(A.D.J.C.,J.) (K.R.S,J.)
01.04.2024

NCC :Yes / No
Internet : Yes

RR



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To

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Madurai Bench of Madras High Court, Madurai.



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and
K.RAJASEKAR,J.

RR

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