

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1199 of 2015

Nilabur Nisha
W/o.A.Mohammed @ Mohammed Ali .. Petitioner

vs.

- 1.The State of Tamilnadu
represented by the
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Coimbatore City,
Coimbatore District. .. Respondents

Prayer:- This 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 detention of the petitioner's husband, namely, A.Mohammed @ Mohammed Ali, S/o.Abdul Khader, aged 38 years, under Section 3(1) r/w 3(2)(b) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 vide detention order dated 18.04.2015 on the file of the second respondent made in proceedings in C.No.04/PBMMSEC Act/IS/2015, quash the same, consequently direct the respondents herein to produce the body and person of A.Mohammed @ Mohammed Ali, S/o.Abdul Khader, who is lodged at Central Prison, Coimbatore.

For Petitioner : Mr.C.D.Sugumar
For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to an order of the second respondent dated 18.04.2015, whereby the husband of the detenu viz., A.Mamudhu @ Mohammed @ Mohammed Ali S/o.Abdul Khadar @ Shahul Hameed @ Ahamed, was detained under the prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. The detenu came to adverse notice in the following cases:-

Sl.No	Police Station and Crime No.	Sections of Law
1.	Pollachi Civil Supplies Criminal Investigation Department Crime No.364 of 2012	6(4) TNSC (RDCS) Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955.
2.	Tiruppur Civil Supplies Criminal Investigation Department Crime No.09 of 2013	6(4) TNSC (RDCS) Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955.
3.	Pollachi Civil Supplies Criminal Investigation Department Crime No.262 of 2014	6(4) TNSC (RDCS) Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955.
4.	Pollachi Civil Supplies Criminal Investigation Department Crime No.290 of 2014	6(4) TNSC (RDCS) Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955.

The alleged ground case has been registered against the detenu on 05.02.2015, by the Inspector of Police, Pollachi, in Crime No.37 of 2015 for offences under Sections 6(4) TNSC (RDCS) Order 1982 r/w 7(1)a(ii) of Essential Commodities Act, 1955. Aggrieved by the order of detention, the present writ petition has been filed.

3. The contention of learned counsel for petitioner is that according to the statement of Quality Inspector, as found in page No.556 of the booklet, samples were taken from the bags and sent to the analyst. On the contrary the Analyst's report, as found in page Nos.681 and 683 of the booklet, informs that the entire contraband were received for the purpose of analysis. When there is a variation between the statements, a clarification should have been called for by the detaining authority. But, he has not done so. The non-consideration of such vital aspect reflects non-application of mind.

4. Relying on the counter, learned Additional Public Prosecutor submitted that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention.

5. We have considered the rival submissions.

6. As rightly contended by learned counsel for petitioner, a clarification should have been called for by the detaining authority when there is variation between the statements. Finding that reflection of non application of mind is apparent and for the reasons put forth by the learned counsel for the petitioner, this Court would allow the present petition.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, A.Mamudhu @ Mohammed @ Mohammed Ali S/o.Abdul Khadar @ Shahul Hameed @ Ahamed, made in C.No.04/PBMMSEC Act/IS/2015 dated 18.04.2015, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Coimbatore City,
Coimbatore District.
3. The Superintendnet
Central Prison,
Coimbatore
4. The Joint Secretary to Government
Public Law and order
Secretariat, Chennai-9
- 5.The Public Prosecutor,
High Court, Chennai.

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