

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.1287/2015

Alima

...Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The District Collector and District Magistrate.
O/o.Collectorate Office,
Coimbatore District.

3.The Additional Secretary,
Government of India, Ministry of Consumer Affairs,
Food and Public Distribution (Dept. of Consumer Affairs)
Room No.270, Krishi Bhawan,
New Delhi - 110 001.

...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the entire records relating to the petitioner's son detention under Section 3(1) r/w. 3(2) (b) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 (Central Act 7 of 1980), vide detention order dated 13.05.2015 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.28/BM/2015 (E1), quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely K.Abbas, S/o.Kajamoideen, aged 24 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.K.R.Ramesh
For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Cr.M.P.:No.28/BM/215(E1) dated 13.05.2015 whereby the detenu, by name, K.Abbas, son of Kajamoideen, aged 24 years was ordered to be detained under the provisions of 3(1) r/w. 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 (Central Act 7 of 1980) branding him as a "BLACK MARKETEER".

2.Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.Learned counsel appearing for the petitioner submitted that the detenu is in remand in the ground case in Cr.No.70/2015 registered by Civil Supplies Criminal Investigation Department, Coimbatore Unit. In paragraph No.3 of the grounds of detention, the Detaining Authority has stated that the detenu filed bail application before the learned Judicial Magistrate No.IV, Coimbatore in C.M.P.No.840 of 2015 and the same was dismissed on 27.04.2015. Again, the detenu filed bail application before the same Court in C.M.P.No.900/2015 and the same was also dismissed on 04.05.2015. Thereafter he filed another bail application before the same court in C.M.P.No./995/2015 and the same was pending as on the date of passing of the detention order. But in paragraph No.5, the Detaining Authority has stated that the family members of the detenu were taking efforts to file bail petitions before the appropriate Court. This is indicative of non-application of mind. Thus, the detention order is vitiated on this ground alone and the same is liable to be quashed.

4.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is

liable to be dismissed.

5.We have heard the learned counsel for both sides with regard to the facts.

6.A perusal of the Grounds of Detention, in particular paragraph No.3, it is seen that the detenu who is in remand in the ground case [Cr.No.70/2015] has filed bail application before the learned Judicial Magistrate No.IV, Coimbatore in C.M.P.No.840 of 2015 and the same was dismissed on 27.04.2015. Again, the detenu filed bail application before the same Court in C.M.P.No.900/2015 and the same was also dismissed on 04.05.2015. Thereafter he filed another bail application before the same court in C.M.P.No./995/2015 and the same was pending as on the date of passing of the detention order. But the Detaining Authority in paragraph No.5 has stated that the family members of the detenu were taking efforts to file bail petition to bring the detenu to come out on bail. This is indicative of non-application of mind. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

7.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

8.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

cse

To

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
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2.The District Collector and District Magistrate.
O/o.Collectorate Office,
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Room No.270, Krishi Bhawan,
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4.The Public Prosecutor,
High Court, Madras.

5.The Superintendent of Central Prison,
Coimbatore.

H.C.P.No.1287/2015

VS (CO)
PSI (25.09.2015)

सत्यमेव जयते
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