



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.28/2015

Malliga

... Petitioner

Vs

1. The Secretary to Government
Ministry of Consumer Affairs,
Food & Public Distribution
[Dept of Consumer Affairs]
No.270, Krishi Bhavan, New Delhi 110001.

2. The Secretary to Government
Food & Consumer Protection Department
2nd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai-9.

3. The District Collector & District Magistrate
Cuddalore District, Cuddalore.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in C3/D.O./30/2014 dated 23.12.2014 on the file of the 3rd respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Jayakumar, son of Padmanaban, aged about 29 years who now confined in the Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhi Kumar

For R1 : M/s.Meenakumari, SCGSC

For RR2 & 3 : Mr.M.Maharaja,APP



O R D E R

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

WEB COPY

Challenge is made to the order of detention passed by the 3rd respondent vide Proceedings in C3/D.O./30/2014 dated 23.12.2014, whereby the brother of the petitioner by name Pandian, son of Ramar, aged 43 years, was ordered to be detained under the provisions of Tamil Nadu 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, Mr.K.Gandhi Kumar, 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.According to the learned counsel appearing for the petitioner, the petitioner is in remand in the ground case in Crime No.200/2014 registered by Cuddalore Civil Supplies CID and the bail application filed by him in the said case before the learned Judicial Magistrate, No.1, Cuddalore in CrI.MP.No.4690/2014 was dismissed on 22.12.2014 and he has not moved any further bail application as on the date of the passing of the detention order. Further, a perusal of the Arrest Memo furnished in the Booklet in respect of the ground case would show that the arrest has not been intimated to the family members of the detenu ; and the detaining authority has not furnished any materials to substantiate the fact of serving the Arrest Memo on the mother or wife or any other relatives of the detenu by Thapal or Registered Post. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the Detaining Authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind. In support of his contention, the learned counsel for the petitioner relied on the judgment reported in 2008 [3] MLJ [CrI.] 744 [AKILANDESWARI Vs. STATE REP.BY SECRETARY TO GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI-9 AND ANOTHER].

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.



6. It is a case, among other grounds, where the learned counsel for the petitioner would urge that the arrest of the detenu in the ground case has not been intimated to the family members or the relatives or to the known persons of the detenu as per the procedure laid down. As evidenced from the Booklet furnished to us, it is seen that the arrest of the detenu in the ground case has not been intimated to the family members of the detenu as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation and the same would vitiate the order of detention and the same cannot be sustained in the eye of law.

"5. Though the learned Additional Public Prosecutor has made an attempt to justify by stating that the family members were intimated through telegrams, he has not any placed any material to satisfy this Court as to whether any telegram was sent and the same was acknowledged either by the family members or relatives of the detenu. A right of intimation to the relatives or family members of the detenu encompasses itself the fundamental right guaranteed under Article 22[5] of the Constitution of India to make a representation to the detaining authority or the State Government, as the case may be. In the event the arrest is not intimated, the detenu would not be in a position to make any such representation and in that context, failure on the part of the detaining authority would amount to deprivation of the right of the detenu to make an effective representation guaranteed under Article 22[5] of the Constitution of India. On the facts of this case, a specific averment has been made that the intimation was not given. We also find that the said averment has not been controverted in the counter affidavit. Though the learned Additional Public Prosecutor submitted that the family members of the detenu were informed of the arrest through telegram, there are no materials placed before us to substantiate the said contention. Further, the copy of the telegram has also not been furnished to the detenu. In the absence of the same, we are unable to accept the contention of the learned Additional Public Prosecutor



that the family members or the relatives of the detenu were informed of the arrest. Under these circumstances the detention order is vitiated."

8. 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.

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

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the 3rd 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 IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
Ministry of Consumer Affairs,
Food & Public Distribution
[Dept of Consumer Affairs]
No.270, Krishi Bhavan, New Delhi 110001.
2. The Secretary to Government
Food & Consumer Protection Department
2nd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai-9.
3. The District Collector & District Magistrate
Cuddalore District,
Cuddalore.

