

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

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THE HONOURABLE MR.JUSTICE B.RAJENDRAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P. No.671 of 2015

Faridha Banu .. Petitioner/W/o.the detenue

Vs.

1.The Secretary to Government of India,
Ministry of Consumer Affairs,
Foods and Public Distribution,
(Department of Consumer Affairs),
Room No.270, "Krishi Bhavan",
New Delhi-110 001.

2.The State of Tamil Nadu,
rep. by the Secretary to Government,
Co-operation Food and Consumer,
Protection Department, Secretariat,
Chennai-600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the order passed by the third respondent in C3.D.O.No.13/15 dated 02.02.2015 and to set aside the same and to produce the detenu Asen Razzak, son of Hussain, aged about 27 years, who is detained in Central Prison at Vellore, before this Court and to set him at liberty.

For Petitioner : Mr.A.Rajesh Kanna
For Respondents : Ms.N.K.Nithila Vani
CGSC for R1

Mr.M.Maharaja, APP
for R2 and R3

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

Challenge is made to the order of detention passed by the third respondent vide Proceedings in C3.D.O.No.13/15 dated 02.02.2015 whereby the detenu/ the petitioner, by name, Asen Razzak, son of Hussain, aged about 27 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Black Marketeer".

2.Though many grounds have been raised in the petition, Mr.A.Rajesh Kanna, the learned counsel appearing for the petitioner, confines his argument only to denial of opportunity to make an effective representation against the order of detention.

3.Learned counsel appearing for the petitioner submitted that the detaining authority has stated that the elder brother of the detenu viz. Shagul Hameed has been detained under Goondas Act and subsequently he was released from prison. But, no material is furnished in the booklet to substantiate the said version. This non furnishing of copies would deprive the detenu of making effective representation to the authorities against the order of detention. Thus, the detention order is vitiated on these grounds 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.As evidenced from the grounds of detention in particular page No.3, paragraph Nos.1 and 2, the detaining authority has stated that "....for that, the Kanchipuram Civil Supplies CID Police arrested his elder brother Tr.Shagul Hameed regarding smuggling of Public Distribution System rice and detained under Goonda Act. Further he stated that he then joined hands with elder brother Tr.Bilal, purchased Public Distribution System rice little by little and sold

it to the Salem rice merchant known to elder brother Tr.Shagul Hameed. Further, about a month ago his elder brother Tr.Shagul Hameed came out from prison from Goonda Act

But a perusal of the booklet furnished before us would reveal that no material is furnished to the detenu regarding the detention of the elder brother of the detenu under Goondas Act and release of the said person. This has resulted in the detenu being deprived of making an effective representation. 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 in C3.D.O.No.13/15 dated 02.02.2015 passed by the third 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

True Copy

Sub Assistant Registrar

सत्यमेव जयते

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To

1.The Secretary to Government of India,
Ministry of Consumer Affairs,
Foods and Public Distribution,
(Department of Consumer Affairs),
Room No.270, "Krishi Bhavan",
New Delhi-110 001.

2.The Secretary to Government,
The State of Tamil Nadu,
Co-operation Food and Consumer,
Protection Department, Secretariat,
Chennai-600 009.

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

4.The Superintendent,
Central Prison, Vellore.

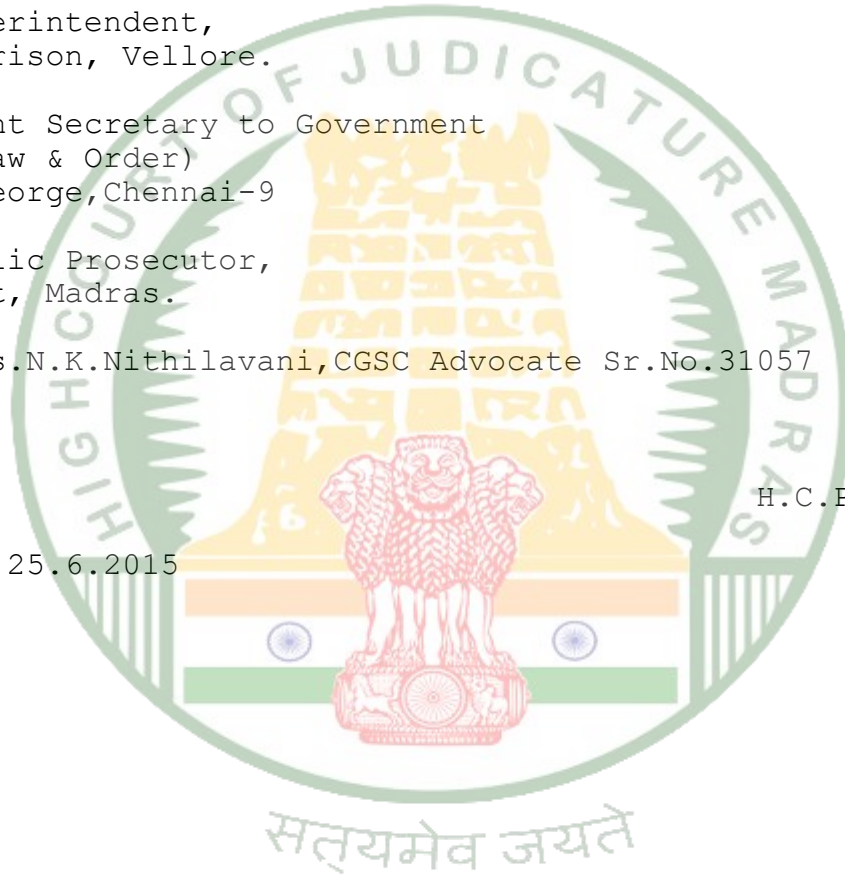
5.The Joint Secretary to Government
Public (Law & Order)
Fort St.George,Chennai-9

6.The Public Prosecutor,
High Court, Madras.

1 cc to Ms.N.K.Nithilavani,CGSC Advocate Sr.No.31057

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