

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

C O R A M

THE HONOURABLE DR. JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.840 of 2015

C.Jayalakshmi

... Petitioner

Vs

1. The Secretary to the Government,
Department of Consumer Affairs,
Government of India, "Krishi Bhavan",
New Delhi - 110 001
2. The Secretary to the Government,
Co-operation Food and Consumer
Protection Department,
Secretariat,
Chennai-600 009
3. District Collector and
District Magistrate,
Villupuram,
Villupuram District

... 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 records relating to the detention order No.C2/4974/2015 dated 09.03.2015 passed by the third respondent and to quash the same and direct the respondent to produce the detenu P.Chandrasekaran, aged about 47, Son of Pandurangan, now confined in Central Prison, Cuddalore, before this Court and set the detenu P.Chandrasekaran, son of Pandurangan at liberty.

For Petitioner : Mr.S.Senthil Murugan

For Respondents : Mr.S.Arockiam,C.G.S.C.for R1
Mr.M.Maharaja,A.P.P.for R2 and R3

O R D E R

(Order of the Court was made by S.Tamilvanan,J.)

The Petitioner, who is the wife of the detenu, has filed this Petition challenging the order of detention passed by the 3rd respondent in No.C2/4974/2015 dated 09.03.2015, branding the detenu as a "Black Marketeer" under the Tamil Nadu Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Act 7 of 1980].

2.Though many grounds have been raised in the petition, Mr.S.Senthil Murugan, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application in the similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3.Per contra, Mr.M.Maharaja, the learned Additional Public Prosecutor would submit 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. However, he submitted that the copy of bail application in the similar case, referred to in the grounds of detention was not supplied to the detenu.

4.We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. It is seen from paragraph No.4 of the Grounds of Detention that in similar case the accused was granted bail by the Judicial Magistrate in Crl.M.P.No.4784/2014 in respect of Crime No.204/2014 for the offence registered under sections 6(4) of TNSC (RDCS) Order 1982 r/w.Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 on the file of Civil Supply C.I.D., Cuddalore. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain any of the document, viz., the bail application, in respect of the similar case. The said bail application filed in similar case was the document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such document has not been supplied to the detenu, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, the non-supply of the copy of the bail application and other documents in similar

case to the detenu would vitiate the impugned detention order. Any bail applications moved by the detenu in the ground case or in the adverse case, necessarily would have to be considered by the Court concerned solely on merits.

6. The Honourable Supreme Court in *M.Ahamed Kutty Vs. Union of India* and another (1990-2-SCC-1) has observed thus:-

"7. Considering the facts in the instant case, the bail applications and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

7. This Court in *Jarinabegam Vs. State of Tamil Nadu* by Secretary to Government, Prohibition and Exercise Department, Chennai and another (2007-1-MLJ-Crl-18) relying upon the decision of the Honourable Supreme Court cited supra has held that non-supply of the copy of the bail application in similar case to the detenu has the effect of vitiating the order of detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the document, viz., bail application, in similar case to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned.

9. In the light of the above said principles laid down by the Honourable Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

10. In the result, this Habeas Corpus Petition is allowed. The impugned detention order 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

To

1. The Secretary to Government
Home, Prohibition, Excise Department
Secretariat
Fort St George
Chennai 600 009.
 2. The Secretary to the Government,
Co-operation Food and Consumer
Protection Department,
Secretariat,
Chennai-600 009
 3. District Collector and
District Magistrate,
Villupuram,
Villupuram District
 4. The Superintendent of Prison,
Central Prison, Cuddalore
 5. The Joint secretary to Government Public Law & Order
Secretariat, Cuddalore.
 6. The Public Prosecutor, High Court Madras
High Court, Chennai.
- + 1 cc to Mr. S. Arockiam Advocate (Sr. 35765)

MG(CO)
CP 03.08.2015

H.C.P.No.840 of 2015