

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

H.C.P.No.3052 of 2014

Vijaya

... Petitioner

Vs

- 1.The Secretary to Government,
Co-operation, Food and Consumer Protection
Department, Namakkal Kavingnar Maligai,
II Floor, Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Dharmapuri District, Dharmapuri.
- 3.The Additional Secretary to the
Government of India,
Ministry of Cosumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi 110 001.

...

Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records relating to the detenu's detention order passed by the second respondent pertaining to the order made in S.C.No.21/2014 dated 13.10.2014 against the petitioner's husband, Dhamotharan, aged 45 years, son of Rangasamy, who is detained at Central Prison, Salem and set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor for R1 &

R2

ORDER

This Habeas Corpus Petition is filed, by the wife of the detenu, namely, Dhamotharan, aged 45 years, son of Rangasamy, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.21/ 2014 dated 13.10.2014, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) of read with section 3(2) (a) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980), branding him as a "Black Marketeer, in the Central Prison, Salem, to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.V.Paarthiban, the learned counsel for the petitioner has assailed the impugned detention order only on the ground 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 was arrested and remanded on 22.09.2014 in respect of Crime No.96 of 2014 on the file of Dharmapuri Civil Supplies CID and lodged at Dharmapuri Sub Jail but the intimation given to the wife of the detenu regarding the arrest and remand of the detenu was shown as 5.01 p.m. on 22.09.2014, i.e., prior to the time of remand of the detenu. Thus, there is contradiction in the time of arrest and remand of the detenu, which is misleading in nature. Hence, there is non-application of mind on the part of the detaining authority and the detention order is vitiated on this ground and hence, the detention order 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 given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and also perused the impugned order of detention and the materials placed on record.

6. A perusal of the booklet supplied to the detenu would show that the detenu was arrested and remanded on 22.09.2014 in respect of Crime No.96 of 2014 on the file of Dharmapuri Civil

Supplies CID and lodged at Dharmapuri Sub Jail. It is seen from page No.113 of the booklet, that the detenu was remanded to judicial custody at 8.20 p.m. on 22.09.2014. But in page No.61 of the booklet, the intimation given to the wife of the detenu, shows that the intimation was given at 5.01 p.m. on 22.09.2014, i.e., prior to the time of remand of the detenu. Under such circumstances, an explanation should have been called for by the detaining authority from the sponsoring authority but failed to do so. Hence, there is non-application of mind on the part of the detaining authority which would vitiate the detention order. Therefore, the detention order is liable to be set aside.

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

8. 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(CS IIII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government,
Co-operation, Food and Consumer Protection
Department, Namakkal Kavingnar Maligai,
II Floor, Secretariat, Chennai - 600 009.
2. The District Magistrate and District Collector,
Dharmapuri District, Dharmapuri.
3. The Additional Secretary to the
Government of India, Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi 110 001.
4. The Superintendent,
Central Prison,
Salem.

5. The Joint Secretary to Government,
Public (Law and order) Department,
Fort.St.George, Chennai.

6. The Public Prosecutor,
High Court, Chennai.

HCP.No.3052 of 2014

ALA(CO)
CA(13/04/2015)



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