



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE **P.R.SHIVAKUMAR**

and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

H.C.P(MD)No.1471 of 2015

Rasathi

.. Petitioner

Vs.

1.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs, Food and Public Distribution,
[Dept of Consumer Affairs],
Room No.270, Krishi Bhavan,
New Delhi 110 001.

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

3.The District Collector cum The District Magistrate,
Tirunelveli, Tirunelveli District.

4.The Inspector of Police,
CSCID, Tirunelveli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records pertaining to the detention order passed by the third respondent in MHS Confdl No.106 of 2015 and quash the same and produce the body of the detenu named M.Kumar aged about 38 years, S/o.Masanathevar, who is confined at Central Prison, Palayamkottai, before this Court and set him at liberty.

For petitioner

: Mr.A.Rajaram

For respondent No.1

: Mr. C.Nandagopal

For Respondent Nos.2 to 4

: Mr.A.Ramar

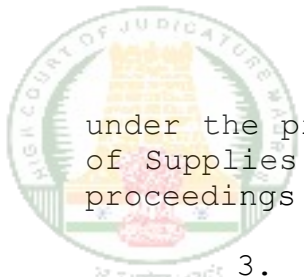
Additional Public Prosecutor

O R D E R

[Order of the Court was made by **P.R.SHIVAKUMAR**]

Though time was taken by the respondents, they have not filed any counter. Hence, we deem it appropriate to hear the oral submissions to be made on behalf of the respondents and also on behalf of the petitioner and pass orders.

2. The petitioner is the wife of the detenu, namely M.Kumar, aged about 38 years, S/o.Masanathevar. Based on a case registered in Crime No.173 of 2015, on the file of the fourth respondent, which is referred to as the ground case, the third respondent has passed an order of detention for the detention of M.Kumar, S/o.Masanathevar, the husband of the petitioner, holding him to be a Black Marketeer as defined



under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Act No.7 of 1980], in his proceedings in MHS Confdl No.106 of 2015, dated 30.09.2015.

3. The Detaining Authority, expressing subjective satisfaction that the detenu conform to the definition of the Black Marketeer and that his presence at large will be prejudicial to the maintenance of supplies of commodities to the community and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the criminal case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

4. Though several grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the contention that there is non-application of mind leading to the mechanical clamping of the order of detention on the part of the Detaining Authority, namely, the third respondent, insofar as the quantity of PDS rice allegedly seized, a notice under Section 6(b) of the Essential Commodities Act, 1955, came to be issued reciting that the PDS rice seized from the detenu was weighing 3,450 kilograms, whereas in the First Information Report and in the detention order, the quantity of PDS rice came to be noted as 1,500 kilograms. The notice issued under Section 6(b) of the Essential Commodities Act, [copies of the notice have also been produced by the learned counsel for the petitioner], shows that the detenu was called upon to show cause why the contraband should not be confiscated. The quantity of PDS rice allegedly seized from the detenu has been shown as 3,450 kilograms. As there is obvious discrepancy regarding the quantity of PDS rice allegedly seized from the detenu, as rightly contended by the learned counsel for the petitioner, the same will exhibit the failure to properly consider and the non-application of mind on the part of the Detaining Authority. The subsequent event of issuance of the show cause notice under Section 6(b) of the Essential Commodities Act, 1955, showing a different quantity of PDS rice to be the contraband seized from the accused in the occurrence, based on which the ground case came to be registered, will be enough to show the absence of proper scrutiny and mechanical clamping of the detention order. In any event, the second show cause notice showing a different quantity of PDS rice will vitiate the order of detention. Hence, this Court is inclined to accept the contention of the learned counsel for the petitioner that the order of detention is vitiated and the same is liable to be set aside.

5. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 30.09.2015, made in MHS Confdl.No.106/2015, passed by the third respondent, the District Collector and the District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name M.Kumar, S/o.Masanathevar, aged about 38 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(CS-I)

/True copy/



To:

1. The Additional Secretary,
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3. The District Collector cum The District Magistrate,
Tirunelveli, Tirunelveli District.
4. The Inspector of Police,
CSCID, Tirunelveli.
5. The Superintendent, Central Prison, Palayamkottai, Tirunelveli District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
7. The Joint Secretary to Government, Public (Law & Order)
Fort St., George, Chennai-9.

+one cc to Mr.A.Rajaram, Advocate in SR.No.65783/15
+one cc to Mr.N.Nandagopal, Advocate in SR.NO.65950

CSL/AN-MP/24.11.2015
3P/10C

**ORDER MADE IN
H.C.P (MD) No.1471 of 2015**

17.11.2015