

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.2160 of 2015

Mohamed Faisal

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Petitioner

Vs.

1.State of Tamil Nadu
Rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009.

2.The Commissioner of Police/Detaining Authority
Commissioner City
Coimbatore District.

3.The Addl.Secretary
Government of India
Ministry of Consumer Affairs
Food and Public Distribution
(Dept. of Consumer Affairs)
Room No.270, Krishi Bhawan
New Delhi 110 001.

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Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the entire records, relating to the petitioner's brother detention under Section 3(1) r/w 3(2)(b) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 (Central Act 7 of 1980) vide detention order, dated 22.08.2015 on the file of the second respondent herein made in proceedings Memo C.No.13/PBMMSEC Act/IS/2015, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely V.A.Abbas @ Athupala Abba, S/o Abubakker, aged 38 years before this Court and set the petitioner's brother at liberty.

For Petitioner : M/s Dalit Tiger C.Ponnusamy
For RR 1 and 2 : Mr.M.Maharaja, APP
For R.3 : Mr.S.Arockiam,CGSC

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner herein is the brother of the detenu and he has filed this petition challenging the order of detention passed by the second respondent in C.No.13/PBMMSEC Act/IS/2015 dated 22.08.2015, branding his brother as a "BLACK MARKETER" under the Tamil Nadu Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Act 7 of 1980].

2. Even though the learned counsel for the petitioner raised many grounds in assailing the impugned order of detention in the petition, he confined 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 for the petitioner, the detention order was passed by the second respondent on 22.08.2015 branding the detenu as a "Black Marketer". The detenu made a representation on 25.08.2015 and the same was rejected by the detaining authority on 04.09.2015. But the Detention Order was confirmed by the State Government on 02.09.2015 itself, even before the detaining authority considered the representation of the detenu. When the Government has confirmed the Detention Order, the Detaining Authority has no power to consider the representation of the detenu and reject the same.

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 considered the rival submissions carefully with regard to facts and perused the materials available on record.

6. As evidenced from the order of the State Government in G.O.(Rt)No.336 Cooperation, Food and Consumer Protection (E1) Department, dated 02.09.2015, the detention order of the detenu was confirmed, whereas, the Detaining Authority has rejected the representation of the detenu on 04.09.2015, for which course of action, the detaining authority has no power.

7. Under such circumstances, the Detention Order is liable to be quashed. Accordingly, the habeas corpus petition is allowed and the detention order passed by the second respondent on

22.08.2015 is hereby quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

GMS

To

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
Coimbatore District.
- 3.The Addl.Secretary
Government of India
Ministry of Consumer Affairs
Food and Public Distribution
(Dept. of Consumer Affairs)
Room No.270, Krishi Bhawan
New Delhi 110 001.
4. The Superintendent
Central Prison,
Coimbatore
5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.
- 6.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.S. Arockiam, Advocate, sr. 21216

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AD (CO)
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