

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

Habeas Corpus Petition No.57 of 2016

Lathasree

... Petitioner

-Verus-

1. Government of Tamil Nadu,
Rep. by its Secretary,
Co-operation, Food and Consumer Protection Department,
Fort St. George,
Chennai 600 009.

2. The District Collector and District Magistrate,
Erode District, Erode.

3. The Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
Department of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi 110 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus calling for the records in Detention Order in Cr.M.P.No.39/Black Marketer/2015-C1 dated 30.10.2015 on the file of the 2nd respondent and to quash the same and to direct the respondents herein to produce the body of the petitioner's husband Panneer @ Panneerselvam, Son of late Karuppannan, aged 53 years, now confined in Central Prison, Coimbatore, before this court and set him at liberty.

For Petitioner : Mr.R.Subhadradevi

For Respondents: Mr.A.N.Thambidurai, APP
for R1 and R2
Mr.S.Arockiam, ACGSC for R3

ORDER

[Order of the court was delivered by S.NAGAMUTHU, J.]

The Petitioner, who is the wife of the detenu, viz., Panneer @ Panneerselvam, son of (late) Karuppannan, aged 53 years, has filed this petition challenging the order of detention passed by the 2nd respondent in Cr.M.P.No.39/Black Marketer/2015/C1 dated 30.10.2015, branding her husband as a "BLACK MARKETER" under Section 3[2][a] r/w 3[1] of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 [Central Act 7 of 1980].

2. We have heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the respondents 1 and 2; and the learned standing counsel for the 3rd respondent and also perused the records carefully.

3. Though several grounds have been raised assailing the impugned order of detention, the main ground upon which the learned counsel for the petitioner focused is that the detenu made a representation to the Government on 05.01.2016 against the detention order, but, so far no order has been passed on the said representation.

4. The learned Additional Public Prosecutor would submit that it is true that the representation of the petitioner dated 05.01.2016 was received by the Government on 07.01.2016. He would further submit that remarks were called for from the detaining authority on 11.01.2016, but, so far remarks were not received from the detaining authority and therefore, the government did not pass any order on the same.

5. We have considered the above submissions carefully.

6. Deprivation of personal liberty by means of preventive detention could be resorted to by strictly following the procedure established by law. Article 22(5) of the Constitution of India mandates that, as soon as may be, after passing the detention order, the authority making the order shall communicate to the detenu the grounds upon which the order has been passed and shall afford him the earliest opportunity to make his representation against the order. In this case, as soon as the receipt of grounds of detention, the detenu made a representation on 05.01.2016 which was received by the Government on 07.01.2011. Any representation that is made should be considered meticulously and appropriate orders should be passed inasmuch as it relates to objection relating to deprivation of the personal liberty. Here in this case, though the representation was received on 07.01.2016, no order has been

passed so far on the said representation which in our considered view is a serious violation of fundamental rights of the detenu. The explanation offered by the Government that remarks were called for from the detaining authority on 11.01.2016 and no remarks were received from the detaining authority so as to enable the Government to pass appropriate order on the representation is no explanation at all in the eye of law. It is not explained to the court as to why the detaining authority did not submit any remarks to the Government and it is also a mystery as to why the Government kept silent from 11.01.2016 without getting remarks from the detaining authority and to pass appropriate orders on the representation of the petitioner.

7. In view of the foregoing discussions, the impugned order of detention cannot stand the legal scrutiny and therefore, the same is liable to be set aside.

8. In the result, the habeas corpus petition is allowed and the detention order dated 30.10.2015 in Crl.M.P.No.39/Black Marketer/2015/C1, passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary, Co-operation, Food and Consumer Protection Department,
Fort St. George, Chennai 600 009.

2.The District Collector and District Magistrate, Erode District, Erode.

3.The Additional Secretary to Government of India, Ministry of Consumer Affairs, Food and Public Distribution,
Department of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi 110 001.

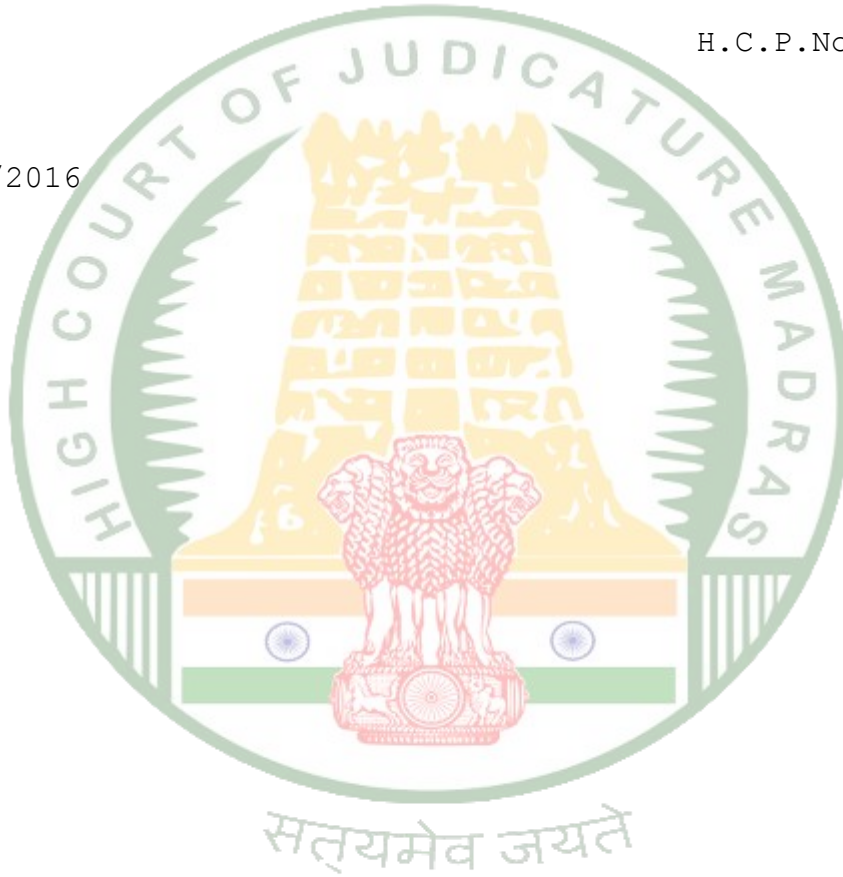
4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.

5.The Public Prosecutor,
High Court,
Chennai.

+lcc to Mr.S.Arockiam, Advocate sr.22899

H.C.P.No.57 of 2016

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srg 17/06/2016



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