

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1074 of 2017

S. Uma Devi

... Petitioner

-vs-

- 1.The State of Tamilnadu
Rep by its Secretary to Government (Home),
Prohibition and Excise Department
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Tiruvallur District.
3. The Separate Union of India,
Secretary to Government of India,
Departmental Food and Consumer
New Delhi ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records, in connection with the order of detention passed by the second respondent in PBMMSECA No.1/2017/Black Marketing Act dated 26.05.2017 and set aside the same and consequently direct the respondents to produce the detenu Sekar @ Gunasekar aged about 54 years, petitioner's husband now confined at Central Prison, Puzhal-II, Chennai, before this Court and set him at liberty.

For Petitioner : Mr. R. Prabhakar
For Respondents: Mr. V.M.R.Rajentran
Additional Public Prosecutor
for R1 & R2

Mr.S. Arockiam
CGSC for R3

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

The petitioner is the wife of the detenu, namely, Sekar @ Guna Sekar male aged 54 years son of Rathina Bose. The detenu has been detained by the 2nd respondent by his order in

PBMMSECA No.1/2017 dated 26.05.2017, holding him to be a "Black Marketeer". The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. The learned counsel appearing for the petitioner would submit that the bail petition filed by the detenu is pending while passing the order of detention. However, the detaining authority has come to the conclusion that there is real possibility of the detenu coming out on bail in all the cases, without considering the nature of the offences. Learned counsel further submits that the detaining authority has passed the detention order without relevant records. He would further submit that in inner page 4 of English grounds of detention order, it has been stated that the bail was granted to the detenu in CMP No.1790 of 2017 whereas in the next line it has been stated that the bail petition was pending and the same is also contrary to the inner page 8 of English grounds of detention order and inner page 3 of tamil grounds. The learned counsel for the petitioner submits that all the above clearly show the detention order has been passed due to non application of mind. On the above grounds the detention order is vitiated.

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.

5. Though the bail application was pending, the detaining authority has taken into consideration of similar cases of the year 2015 i.e., Cr.No.160/2015 come to the conclusion that there was a real possibility of the detenu coming out on bail. Such conclusion is nothing but merely non application of mind. In the inner page 4 of English grounds of detention order, the detaining authority has stated that the bail was granted to the detenu in CMP No.1790 of 2017, whereas in the next line it has been stated that the bail petition was pending. It is also contrary to the inner page 8 of English grounds of detention order and inner page 3 of tamil grounds. This would clearly establish the non-application of mind of the detaining authority. Further, the detenu was arrested on 04.05.2017 and the detention order was passed on 26.05.2017. In this case notice was issued on 03.07.2017. Since then, no counter affidavit was filed. Therefore, there is no explanation, on record, for the delay in not passing the detention order. Therefore, on the above grounds, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in PBMMSECA No.01/2017, passed by the 2nd respondent is set aside. The detenu, namely, Sekar @ Guna Sekar, Male, aged 54, S/o Rathina Bose, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To:

- 1.The Secretary to Government (Home),
Prohibition and Excise Department
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Tiruvallur District.
3. The Separate Union of India, Secretary to Government of
India, Departmental Food and Consumer, New Delhi.
4. The Superintendent, Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor, Madras High Court, Madras.
- 6.The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-9.

+1cc to Mr.S.Arokiam, CGSC, Advocate sr.73796

H.C.P.No.1074 of 2017

ss(23/10/2017)