

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.1152 of 2017

V. Perumayee

... Petitioner

-vs-

- 1.The State of Tamil Nadu
Represented by its Secretary to Government,
Prohibition and Excise Department (Home)
Fort St.George, Chennai - 600 009.
2. The District Collector
Namakkal District.
Namakkal.
3. The Secretary to Government,
Food & Consumer Production of India,
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 entire records, pertaining to the order of the detention passed by the 2nd respondent made in C.M.P.No.02/PBMMSEC Act/2017(F3) dated 10.6.2017 and quash the same and direct the respondents 1 and 2 to produce the body and person of the petitioner's son Dhanapal aged 35 years son on Vellaiyaan now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr. K.A. Mariappan

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

Mr.S.Arockiam
Central Govt. Standing Counsel
[for R3]

O R D E R

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

The petitioner is the mother of the detenu, namely, Dhanapal male aged 35 years son of Vellaiyan. The detenu has been detained by the 2nd respondent by his order in No.C.M.P.No.02/PBMMSEC Act/2017 [F3] dated 10.06.2017, holding him to be a "Black Marketeer", as contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). 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 the detenu filed bail petition in C.M.P.No.2777 of 2017 dt.2.6.2017 and the same was dismissed on 8.6.2017 and subsequent bail petition was filed in C.M.P.No.2912 of 2017 dt.9.6.2017 and the same is pending. However, the detaining authority has come to the conclusion that there is real possibility of the detenu coming out on bail. Learned counsel further submits that the detaining authority has passed the detention order without relevant records. He would further submit that the recovery of PDS rice was said to have purchased from the beneficiaries and once goods are sold to the beneficiaries through ration shop and when nothing on record to show that the beneficiaries are barred from selling PDS rice, accusing the detenu of indulging in the activities of prejudicial to the maintenance of the supplies of the essential commodities does not hold good. The above clearly show that the detaining authority due to non application of mind passed the detention order. On the above grounds the detention order is vitiated.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit 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. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending in the adverse case and the ground case. Though the detaining authority has made reliance on similar cases in which accused were granted bail, the facts

involved in those cases are different. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Further the detenu was arrested on 31.5.2017 and the detention order was passed on 10.6.2017. Counter filed before this Court today. But, there is no explanation for delay. 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 C.M.P.No.02/PBMMSEC Act/2017 (F3) dated 10.6.2017, passed by the 2nd respondent is set aside. The detenu, namely, Dhanapal S/o Vellaian Male aged 35 years, 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,
Prohibition and Excise Department (Home)
Fort St.George, Chennai - 600 009.
2. The District Collector, Namakkal District. Namakkal.
3. The Secretary to Government,
Food & Consumer Production of India, New Delhi.
4. The Superintendent, Central Prison, Salem.
- 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, Advocate sr.73797

H.C.P.No. 1152 of 2017

vsn(co)
ss(23/10/2017)