

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.1305 of 2017

Tmt.M. Mareeswari

... Petitioner

-vs-

1.The Secretary to Government,
Food and Consumer Protection Department
2nd Floor, Namakkal Kavingar Maligai,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police
Greater Chennai.
Veperi, Channai 600007.

3. The Secretary to Government,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of consumer affairs)
Room No.270, Krish Bhavan,
New Delhi 110001

... 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 dated 23.06.2017 in Memo No.4/Black Marketing Act/2017 against the petitioner's Cousin Maheswaran, Son of Ponnusamy aged about 30 years, who is confined at Central Prison, Puzhal, Channai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner :
For Respondents:

Mr. V. Paarthiban
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 sister-in-law of the detenu, namely, Maheswaran male aged 30 Son of Ponnusamy. The detenu has been detained by the 2nd respondent by his order in No.4/2017 dated 23.06.2017, 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 detenu has granted bail in Cr.No.251 of 2016. However, the detaining authority has come to the conclusion that there is real possibility of the detenu coming out on bail in other case 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 the Booklet page No.19,28,29 are illegible and hence it is affected the detenu for making effective representation. He would further submit that the particulars of medical treatments given to the detenu while he is in the police custody were not placed before the detaining authority and the detaining authority has also not clarified from the police even though the police admitted the said medical treatment given to the detenu. The detenu submitted his representation on 10.7.2017 but the same was not considered till date. 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. The detaining authority while passing the detention order, has considered that since similar case in Cr.No.251/2016 bail was granted to him and hence come to the conclusion 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 ground case. Though the detaining authority has made reliance on similar case in which accused was granted bail, the facts involved in that case is 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 detenue was arrested on 12.6.2017 and the detention order was passed on 23.06.2017. He made his representation on 10.7.2017 and the same was received by the detaining authority on 17.7.2017. The remarks were called for on 18.7.2017. Reminder was also sent on 5.10.2017. But, no remarks were received till date. In this case notice was issued on 24.7.2017. 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 No.4/2017 dt.23.06.2017, passed by the 2nd respondent is set aside. The detenu, namely, Maheswaran Male aged 30 years, s/o Ponnusamy 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/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Note to office:

1. Issue copy by today itself.

2. Order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To:

1.The Secretary to Government, Food and Consumer Protection
Department
2nd Floor, Namakkal Kavingar Maligai, Secretariat, Chennai
- 600 009.

2. The Commissioner of Police, Greater Chennai.
Veperi, Chennai 600007.

3. The Secretary to Government, Government of India,
Ministry of Consumer Affairs, Food and Public Distribution,
(Department of consumer affairs) Room No.270, Krish Bhavan,
New Delhi 110001.
4. The Superintendent, Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor, Madras High Court, Madras.
- 6.The JOint Secretary to Govt
Public Law and order Department
Secretariat Chennai-9

+1 cc to Mr.S.Arockiam CGSC Advocate sr 73974

H.C.P.No. 1305 of 2017

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