

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

H.C.P.No.812 of 2017

Mehar Banu

.. 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
O/o. Commissioner of Police
Coimbatore City
Coimbatore -18
 - 3.The Additional 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
- .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records relating to the petitioner's son 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 18.05.2017 on the file of the second respondent herein made in proceedings in Memo C.No.02/PBMMSEC Act/IS/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely S.Anwar @ Anwar Basha, S/o.Sulthan Sha, aged 39 years before this Court and set him at liberty from detention, now the petitioner's son detain at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor
for R1 and R2
Mr.S.Arockiam
Central Govt.
Standing Counsel for R3

O R D E R

[Order of the Court was made by A.SELVAM, J.]

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for the records relating to the detention order passed in C.No.02/PBMMSEC Act/IS/2017 dated 18.05.2017, against the detenu by name, S.Anwar @ Anwar Basha, aged 39 years, S/o.Sulthan Sha, residing at Door No.12-A/17, 3rd Street, Lakshmi Nagar, Nallamapalayam, Coimbatore and quash the same.

2. The Inspector of Police, Civil Supplies Criminal Investigation Department, Coimbatore, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein it is averred that the detenu has involved in the following adverse cases:

i) Pollachi Civil Supplies Criminal Investigation Department, Crime No.81 of 2016, registered under Section 6(4) of TNSC (RDCS) Order 1982 r/w.7(1)(a)(ii) of Essential Commodities Act 1955;

ii) Pollachi Civil Supplies Criminal Investigation Department, Crime No.114 of 2016, registered under Section 6(4) of TNSC (RDCS) Order 1982 r/w.7(1)(a)(ii) of Essential Commodities Act 1955;

iii) Pollachi Civil Supplies Criminal Investigation Department, Crime No.386 of 2016, registered under Section 6(4) of TNSC (RDCS) Order 1982 r/w.7(1)(a)(ii) of Essential Commodities Act 1955;

iv) Pollachi Civil Supplies Criminal Investigation Department, Crime No.137 of 2017, registered under Section 6(4) of TNSC (RDCS) Order 1982 r/w.7(1)(a)(ii) of Essential Commodities Act 1955; and

v) Pollachi Civil Supplies Criminal Investigation Department, Crime No.138 of 2017, registered under Section 6(4) of TNSC (RDCS) Order 1982 r/w.7(1)(a)(ii) of Essential Commodities Act 1955.

3. Further it is averred that on 01.05.2017, the Sub-Inspector of Police, Civil Supplies Criminal Investigation Department, Coimbatore and other police constables have watched

smuggling of rice in the place of occurrence. At that time, they noticed a person with 15 bags of PDS rice and he has been enquired and ultimately he admitted his guilt. Consequently, a case has been registered in Crime No.99 of 2017 under Sections 6 (4) of TNSC (RDCS) Order 1982 r/w.7(1)(a)(ii) of EC Act, 1955 and ultimately requested the Detaining Authority to invoke the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) against the detenu.

4. The Detaining Authority, after perusing the averments made in the affidavit and other connected materials, has derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as "Black Marketer" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the mother of the detenu, as petitioner.

5. In the counter filed on the side of the respondents, it is averred that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority and the Detaining Authority, after considering the materials supplied to him and other connected materials, has derived a subjective satisfaction to the effect that the detenu is habitual offender and has rightly branded him as "Black Marketer" by way of passing the impugned Detention Order and the same does not call for any interference and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended that on the side of the detenu, a representation dated 19.05.2017 has been submitted, but so far the same has not been disposed of and therefore, the detention order in question is liable to be quashed.

7. On the side of the respondents, a proforma has been submitted, wherein, it is seen that on 19.05.2017 a representation has been submitted on the side of the detenu, but so far the same has not been disposed of by the concerned authorities. The same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore, the Detention Order in question is liable to be quashed.

8. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 18.05.2017 passed in Memo C.No.02/PBMMSEC Act/IS/2017 by the second respondent against the detenu by name, S.Anwar @ Anwar Basha, aged 39 years, S/o.Sulthan Sha, is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gpa

To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The Secretary to Govt (Home)
Prohibition and Excise Department
Fort St. George
Chennai - 600 009
3. The Commissioner of Police /Detaining Authority
O/o. Commissioner of Police
Coimbatore City
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- 4.The Additional 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
- 5.The Superintendent
Central Prison
Coimbatore
[in duplicate for communication to the detenu]

6.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.W.Camyles Gandhi Advocate sr 68334
+1 cc to M/s.S.Arockiam Advocate sr 68154

H.C.P.No.812 of 2017

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