

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P. No.1159 of 2018

Noorjahan

... Petitioner

-vs-

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Co-Operation, Food and Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Fort St. George, Chennai-9.
2. The District Collector and District Magistrate,
O/o. The District Collector Office,
Coimbatore-641 018.
3. The Addl. Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
[Department of Consumer Affairs]
Room No.270, Krishi Bhawan,
New Delhi-110 001.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention Cr.M.P.NO.10/BM/2018(E1) dated, 31.05.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu M.Ibrahim, S/O. Moideen Kutty, who is presently detained in the Central Prison, Coimbatore to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor for RR1 & 2

: Mr.B.K.Girish Neelakantan for R3

ORDER
[Order of the Court by C.T.SELVAM, J.]

The petitioner, who is the wife of the detenu, namely, Ibrahim, son of Moideen Kutty, age 40 years, challenges the impugned order of detention, dated 31.05.2018 in Cr.M.P.No.10/BM/2018 (E1) detaining her husband as "BLACK MARKETER", as contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).

2. The detenu has come to adverse notice in the following case:-

S.No.	Cr.No. & Police Station	Offences
1.	Cr.No.286/2014 Civil Supplies Criminal Investigation Department, Pollachi	6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955.
2.	Cr.No.324/2015 Civil Supplies Criminal Investigation Department, Pollachi	6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955.
3.	Cr.No.346/2017 Civil Supplies Criminal Investigation Department, Pollachi	6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955.

The ground case has been registered against the detenu in Crime No.105/2018 on the file of Civil Supplies Criminal Investigation Department, Pollachi, for offences u/s 6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955. The detention order has been passed by first respondent in Cr.M.P.No.10/BM/2018 (E1) on 31.05.2018.

3. 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.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

5. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.105/2018 on 24.04.2018, whereas the detention order was

passed on 31.05.2018, i.e. after a lapse of 37 days. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court reported in 2005 MLJ (Cr1.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another). Hence, on the above grounds, the detention order is liable to be set aside.

6. Further, the Grounds of Detention would reveal that 3 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.105/2018 for the offences u/s.6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955. Admittedly, the detenu has moved bail application in the ground case and the same was dismissed in Cr.M.P.No.1482/2018 on 07.05.2018. Then, he has filed a second bail petition in the ground case and the same was also dismissed in CMP.No.1601/2018 on 16.05.2018. Therefore, the probability of release of the petitioner imminently does not arise. Hence, we are inclined to set aside the detention order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. 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 without application of mind. It is to be noted that the detenu was arrested in the ground case in Cr.No.105/2018 on 24.04.2018, whereas the detention order was passed on 31.05.2018, i.e. after a lapse of 37 days. This inordinate delay in passing of detention order would vitiate the same. Learned counsel for the petitioner has rightly placed reliance on the decision in Ramesh's case (cited supra) wherein this Court has held as follows:

"....

3. It is brought to our notice by the learned Government advocate that the analyst report was received on 06.12.2014 and the doctor has issued certificate on 07.12.2014. Even in the counter affidavit filed by the first respondent, it is stated that the sponsoring authority has submitted his affidavit only on 15.01.2015. When the sponsoring authority is in possession of the analyst report and the doctor's report even on 06.12.2014 and 07.12.2014, there is no proper explanation for submitting his affidavit till 15.01.2015 for invoking the provisions of Tamil Nadu Act 14 of 1982. Even

thereafter, the impugned detention order was passed only on 27.02.2015, i.e. After five weeks of receipt of the affidavit from the sponsoring authority. Though the detaining authority has filed a counter affidavit, there is no explanation for the undue delay in passing the impugned order.

4. In this regard, learned counsel for the petitioner relied on unreported decision of this Court rendered in H.C.P. No.1149 of 1995, dated 13.12.1995. In similar circumstances, after pointing out the unexplained delay between the date of submission of the affidavit by the sponsoring authority and the detention order, the Division Bench of this Court has concluded thus:

"Such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders....."

7. In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.10/BM/2018 (E1) dated 31.05.2018, passed by the first respondent is set aside. The detenu, namely, Ibrahim, son of Moideen Kutty, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VII)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To:

1. The Secretary to Government,
Co-Operation, Food and Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Fort St. George, Chennai-9.
2. The District Collector and District Magistrate,
O/o. The District Collector Office,
Coimbatore-641 018.

3. The Addl. Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
[Department of Consumer Affairs]
Room No.270, Krishi Bhawan,
New Delhi-110 001.

4. The Superintendent,
Central Prison, Coimbatore.

5. The Public Prosecutor
High Court, Madras.

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

+1cc to Mr.B.K.Girish Neelakantan, Advocate SR.No.64687

GMV (03/10/2018)

H.C.P.No.1159 of 2018



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