IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE M.DHANDAPANI

H.C.P.No.2411 of 2017

Assibathmahapoora
W/o.Anwar Ali .. Petitioner

Vs

1.State rep. by
Secretary of State,
Co-operation, Food & Consumer Protection Department,
2nd Floor, Namakkal Kavingnar Maligai,
St. George Fort,
Chennai-9.

2.The District Collector and District Magistrate,
Villupuram District,
Tamilnadu.

3.The Secretary to Government of India,
Co-operation, Food & Consumer Protection Department,
Krishi Bhawan,
New Delhi-110 011. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call upon the production of the records relating to the detention order dated 28.11.2017 made in detention order Memo No.C2/33860/2017 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's husband Anwar Ali, aged 52 years, S/o.Abdul Wahab, branded as Black Marketeer and now confined in Central Prison, Cuddalore before this Hon'ble Court and set him at liberty forthwith.

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For Petitioner : Mr.S.Paul Gnanamuthu

For R1 and R2 : Mr.G.Ramar, GA [Crl. Side]

For R3 : Mr.S.Arockiam,
Central Govt. Standing Counsel

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 records relating to Detention Order dated 28.11.2017 passed in No.C2/33860/2017 by the Detaining Authority, against the detenu by name Anwar Ali, aged 52 years, S/o.Abdul Wahab, residing at No.25, Madhakoil Street, Kannai Village, Vilupuram Taluk and District and quash the same.

2.The Inspector of Police, Civil Supplies CID, Cuddalore Unit, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu by name Anwar Ali, aged 52 years, S/o.Abdul Wahab has involved in the following adverse case.

i. Civil Supplies CID Viluppuram Unit Crime No.38/2017 registered under Sections 6[4] of Tamil Nadu Scheduled Commodities [Regulation of Distribution by Card System] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955.

3.Further, it is averred in the affidavit that on 07.04.2017 at about 13.30 hrs, on information about smuggling and hoarding of essential commodities, vehicle check up has been made in National Highways, Viluppuram bye-pass, Virattikuppam Pathai near Kottapakkathuveli cross road and found TVS XL Super vehicle bearing registration No.TN32-B-3882 and also found the vehicles bearing registration Nos.TN20-AY-8462 and TN32-A-1987 and ultimately, found that the present detenu and others have smuggled PDS rice and after observing formalities, a case has been registered in Crime No.38/2017 under Sections 6[4] of TNSC [RDCS] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955. Further, it is averred in the affidavit that one Mohamed Ali alias Mubarak Ali, S/o.Abdul Wahab, brother of the present detenu has given a voluntary confession statement, wherein, he stated to the effect that his brother, viz. the present detenu has already involved in eight cases of similar nature and ultimately, requested the Detaining Authority to invoke the provisions of Prevention of Black Marketing and Maintenance of

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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 documents, has derived to a subjective satisfaction to the effect that the detenu is a habitual offender and his usual practice is to smuggle and also hoard PDS rice and ultimately, delcared him as Black Marketeer, by way of passing the Detention Order and in order to quash the same, the present petition has been filed by the wife of the detenu, as petitioner.

5.On the side of the respondents 1 and 2, a counter has been filed, wherein, it is contended inter alia to the effect that the Sponsoring Authority has submitted all the related records to the Detaining Authority. The Detaining Authority after perusing the same, has rightly declared the detenu as black marketeer and further, the representation given on the side of the detenu has been duly disposed of and altogether, the present Habeas Corpus Petition deserves to be dismissed.

6.The learned counsel appearing for the petitioner has raised the following grounds :

1. On the side of the detenu, a representation has been given and the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.
2. The Detaining Authority has relied upon the order passed in bail application filed in Crime No.46/2016 and in the booklet supplied to the detenu, only English version of bail application alone is found place and a copy of the Tamil version is not found place and the same would affect the rights of the detenu.

7.Per contra, the learned Government Advocate appearing for the respondents 1 and 2 has contended to the effect that the representation submitted on the side of the detenu has been duly disposed of without delay and further, simply because of Tamil version of bail application filed in Crime No.46/2016 has not been furnished to the detenu, the same has not affected his rights and the Detaining Authority, after considering the averments made in the affidavit submitted by the Sponsoring Authority and also after perusing the relevant records, has rightly branded the detenu as black marketeer, by way of passing the reasoned Detention Order and the same does not require any interference.

8.It is seen from the records that on the side of the detenu, a representation has been given. The main contention put forth on the side of the petitioner is that the same has not been disposed of without delay. On the side of the respondents

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1 and 2, a Proforma has been submitted, wherein, in between column Nos.7 and 9, 4 clear working days are available and in between column No.14 and 15, 3 clear working days are available and no explanation has been given on the side of the respondents 1 and 2 with regard to such delay and the same would affect the rights of the detenu guaranteed under Article 22[5] of the Constitution of India.

9.Now, coming to the second ground urged on the side of the petitioner is that in the booklet furnished to the detenu, English version of bail application filed in Crime No.46/2016 alone is available and a copy of Tamil version is not at all available.

10.In fact, this Court has perused the booklet submitted on the side of the respondents 1 and 2. As rightly pointed out on the side of the petitioner, at page No.184 of the booklet, English version of bail application filed in Crime No.46/2016 is alone available and a copy of Tamil version is not at all available and the same would also affect the rights of the detenu.

11.Apart from the grounds urged on the side of the petitioner, the Court has meticulously look into the Detention Order passed by the Detaining Authority, wherein, at page No.3 of the booklet, it has been clearly mentioned to the effect that the elder brother of the present detenu has given confession, wherein, he admitted to the effect that his younger brother viz. the present detenu has already involved in 8 previous cases. But, the particulars of previous cases are not found place in the Detention Order. Therefore, it is needless to say that the Detaining Authority has not properly applied his mind in passing the Detention Order in question. Since the Detaining Authority has not properly applied his mind in passing the Detention Order in question, the same would also be a ground to quash the same.

12.It has already been pointed out that there is delay in disposing of representation and the same has not been properly explained, further, in the booklet, copy of Tamil version of bail application filed in Crime No.46/2016 has not been furnished to the detenu. Therefore, viewing from any angle, the Detention Order in question is not sustainable either on facts or on legal grounds. Under the said circumstances, the Detention Order in question is liable to be quashed.

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13.In fine, this petition is allowed. The Detention Order dated 28.11.2017 passed in No.C2/33860/2017 by the Detaining Authority against the detenu by name Anwar Ali, aged 52 years, S/o.Abdul Wahab, 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 IX)

//True Copy//

Sub Assistant Registrar

gya

To

1.Secretary to the Government of Tamil Nadu,
Co-operation, Food & Consumer Protection Department,
2nd Floor, Namakkal Kavingnar Maligai,
St. George Fort, Chennai-9.

2.The District Collector and District Magistrate,
Villupuram District, Tamilnadu.

3.The Secretary to Government of India,
Co-operation, Food & Consumer Protection Department,
Krishi Bhawan, New Delhi-110 011.

4.The Joint Secretary,
Public, Law and Order,
Fort St. George, Chennai-9.

5.The Superintendent,
Central Prison, Cuddalore.
[in duplicate for communication to the detenu]

6.The Public Prosecutor,
High Court, Madras.
+1 cc to Mr.S.Arockiam Advocate sr 22778

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