

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2018

CORAM

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

H.C.P.No.2424 of 2017

Sulaika
W/o.Abbas

..Petitioner/wife of the
Detenue

Vs

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police/Detaining Authority,
O/o.The Commissioner of Police,
Coimbatore City, Coimbatore-18.

3.The Additional 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

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the entire records relating to the petitioner's husband 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 13.12.2017 on the file of the second respondent herein made in proceedings Memo C.No.05/PBMMSEC Act/IS/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely R.Abbas, S/o.Raheem, aged 31 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner: Mr.W.Camyles Gandhi

For R1 and R2 : Mr.R.Prathap Kumar
Additional Public Prosecutor

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 13.12.2017 passed in C.No.05/PBMMSEC Act/IS/2017 by the Detaining Authority, who has been arrayed as second respondent herein and quash the same.

2.The Inspector of Police, Civil Supplies Criminal Investigation Department, Pollachi Unit, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu by name R.Abbas, aged 31 years, S/o.Raheem, door No.55-E, Gandhi Nagar, Sivanandha Colony, Coimbatore has involved in the following adverse cases.

- i. Pollachi Civil Supplies Criminal Investigation Department Crime No.386/16 dated 20.10.2016 registered under Sections 6[4] TNSC [RDCS] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955.
- ii. Pollachi Civil Supplies Criminal Investigation Department Crime No.141/17 dated 02.05.2017 registered under Sections 6[4] TNSC [RDCS] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955.

3.Further, it is averred in the affidavit that on 02.12.2017 at about 18.00 hrs, the Sub Inspector of Police, Civil Supplies CID, Pollachi Unit and other Police Constables have made vehicle check up near Vellalur rice mill bus stop. At that time, they found a TVS Victor bearing registration No.TN02-M- 8984 and the same has been intercepted and ultimately, found that the detenu has carried 50 kilograms of PDS rice, without any permission of license and during investigation, on information, they seized 22 bags of PDS rice and consequently, a case has been registered in Crime No.343/2017 under Sections 6 [4] of TNSC [RDCS] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955 and ultimately, requested the Detaining Authority to invoke Prevention of Black Marketing 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 documents, has derived to a subjective satisfaction to the effect that the detenu is a professional offender and ultimately, branded 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, counter has not been filed. Under the said circumstances, this Habeas Corpus Petition is disposed of on merits on the basis of available materials on record.

6.The learned counsel appearing for the petitioner has contended to the effect that on the side of the petitioner, a representation has been given to the concerned authorities for the purpose of quashing the Detention Order and the same has not been considered without delay and therefore, the Detention Order in question is liable to be quashed.

7.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 has contended to the effect that the representation alleged to have been given by the petitioner has been duly disposed of without delay and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8.On the side of the respondents 1 and 2, a proforma has been submitted, wherein, it has been clearly stated a representation has been received on 18.12.2017, remarks have been called for on 19.12.2017, remarks received on 03.01.2018 and the concerned file has been submitted on 04.01.2018 to the concerned Department and therefore, in between column Nos.7 and 9, there is a delay of 9 days and the same has not been explained on the side of the respondents 1 and 2. Under the said circumstances, the Detention Order in question is liable to be quashed.

9.In fine, this petition is allowed. The Detention Order dated 13.12.2017 passed in C.No.05/PBMMSEC Act/IS/2017 by the Detaining Authority against the detenu by name R.Abbas, S/o.Raheem, is quashed and ordered to be set him at liberty forthwith, unless he is required to be incarcerated in any other case.

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Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2.The Commissioner of Police/Detaining Authority,
O/o.The Commissioner of Police,
Coimbatore City,
Coimbatore-18.

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

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

6.The Public Prosecutor,
High Court, Madras.

+1CC TO MR.W.Camyles Gandhi, Advocate S.R.No.21027
+1CC TO MR.S.Arockiam, Advocate S.R.No.20774

सत्यमेव जयते

H.C.P.No.2424 of 2017

RSK (CO)
RMP (21/03/2018)

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