

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.03.2018

CORAM

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

H.C.P.No.2455 of 2017

D.Kavitha
W/o.Deivasigamani

.. Petitioner

Vs

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

2.The District Collector and District Magistrate,
Vellore District,
Vellore-9.

3.The Secretary to Government,
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 records in connection with
the order of detention passed by the 2nd respondent dated 14.12.2017 in
C3.D.O.No.127/2017 against the petitioner's husband Theivasigamani,

S/o.Subramani, aged about 45 years, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
For R1 and R2 : Mr.R.Ravichandran
Additional Public Prosecutor
For R3 : Mr.S.Arockiam,
Central Govt. Standing Counsel

ORDER

[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 Detention Order dated 14.12.2017 passed in C3.D.O.No.127/2017 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, Vellore, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu has involved in the following adverse case.

- i. Civil Supplies CID, Thiruvallur Unit Crime No.786/2011 registered under Sections 6[4] of TNSC [RDCS] Order, 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955 and also under Sections 353, 323 and 307 of Indian Penal Code.

3.Further, it is averred in the affidavit that on 23.11.2017 at about 15.00 hrs, on receipt of information, the Inspector of Police, Civil Supplies CID, Vellore and other Police Constables have rushed to the village by name Ameerpet and found some persons unloading rice bags from a lorry bearing registration No.TN-21-H-9099 and they checked all the rice bags and ultimately, found that the same is PDS rice. After observing due formalities, a case has been registered against the present detenu and others in Crime No.207/2017 under Sections 6[3] and 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 [Act 7 of 1980] against the detenu.

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

5. In the counter filed on the side of the respondents 1 and 2, it is averred to the effect that the Sponsoring Authority has submitted all the relevant records to the Detaining Authority, for the purpose of showing that the detenu is a habitual offender and further, it is averred to the effect that the representation given by the detenu has been duly disposed of and therefore, the present petition deserves to be dismissed.

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

- i. In paragraph No.5 of the Detention Order, it is observed to the effect that in Crime No.29/2017 registered under Sections 6[4] of TNSC [RDCS] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955, a bail order has been granted in favour of one Sardhar and its English version is alone available in the booklet and no Tamil version of the said order is found place and the same would affect the rights of the detenu.
- ii. On the side of the detenu, a representation has been given and the same has not been duly considered without delay.

7. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 has contended to the effect that in the Detention Order,

bail granted in respect of adverse case has alone been mentioned. Since its Tamil version is not found place in the booklet, the same could not affect the rights of the detenu and further, the representation given on the side of the detenu has been duly disposed of without delay and altogether, the contentions put forth on the side of the petitioner are liable to be rejected.

8.As rightly pointed out on the side of the petitioner, at page No.10 of the Detention Order, it has been clinchingly mentioned to the effect that in Crime No.29/2017 registered under Sections 6[4] of TNSC [RDCS] Order 1982 r/w 7[1][a][ii] of Essential Commodities Act, 1955, bail has been granted to accused one Sardhar. On the side of the respondents 1 and 2, a booklet has been submitted, wherein, only English version of the bail order pertaining to Crime No.29/2017 is found place and Tamil version of the same is not found place and the same would affect the rights of the detenu.

9.On the side of the respondents 1 and 2, a proforma has been submitted, wherein, it has been clearly mentioned that in disposing of the representation given on the side of the detenu, in between column Nos.7 and 9, there is a delay of 8 clear working days and no explanation has been given on the side of the respondents 1 and 2 for such delay and the same would also affect the rights of the detenu guaranteed under Article 22[5] of the

Constitution of India. Therefore, viewing from any angle, the Detention Order passed by the second respondent/Detaining Authority is not legally factually sustainable and the same is liable to be quashed.

10.In fine, this petition is allowed. The Detention Order dated 14.12.2017 passed in C3.D.O.No.127/2017 by the Detaining Authority against the detenu by name Theivasigamani, aged 45 years, S/o.Subramani, is quashed and directed to set him at liberty forthwith, unless he is required to be immured in any other case.

gya

[A.S., J.] [P.K., J.]
21.03.2018

सत्यमेव जयते
WEB COPY

To

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

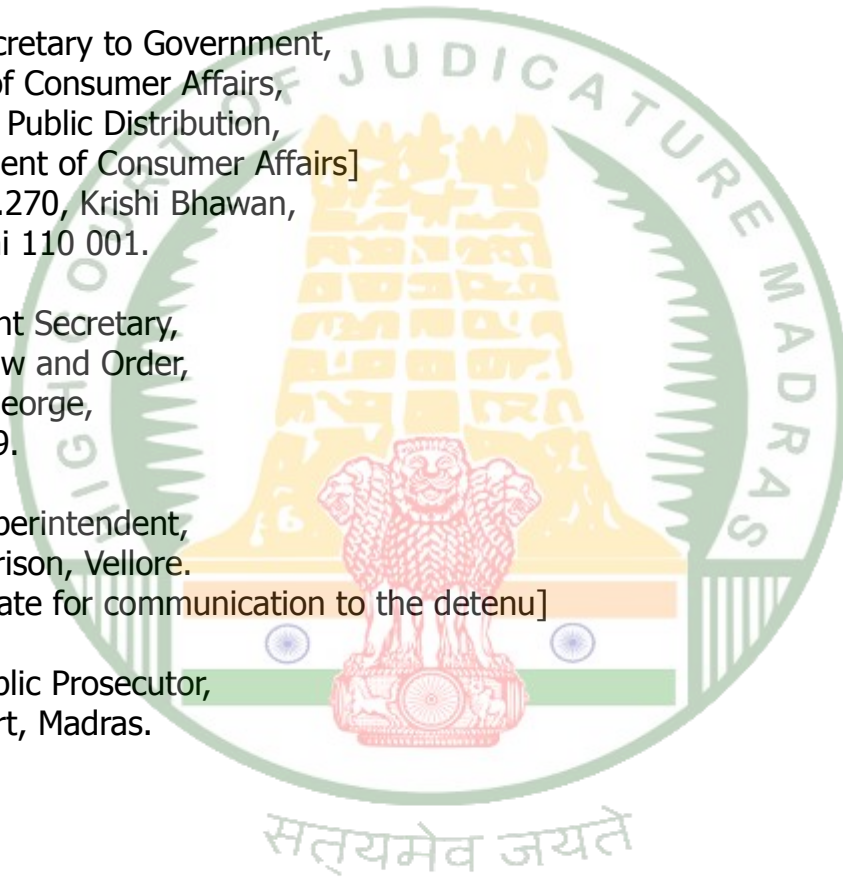
2.The District Collector and District Magistrate,
Vellore District, Vellore-9.

3.The Secretary to Government,
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, Vellore.
[in duplicate for communication to the detenu]

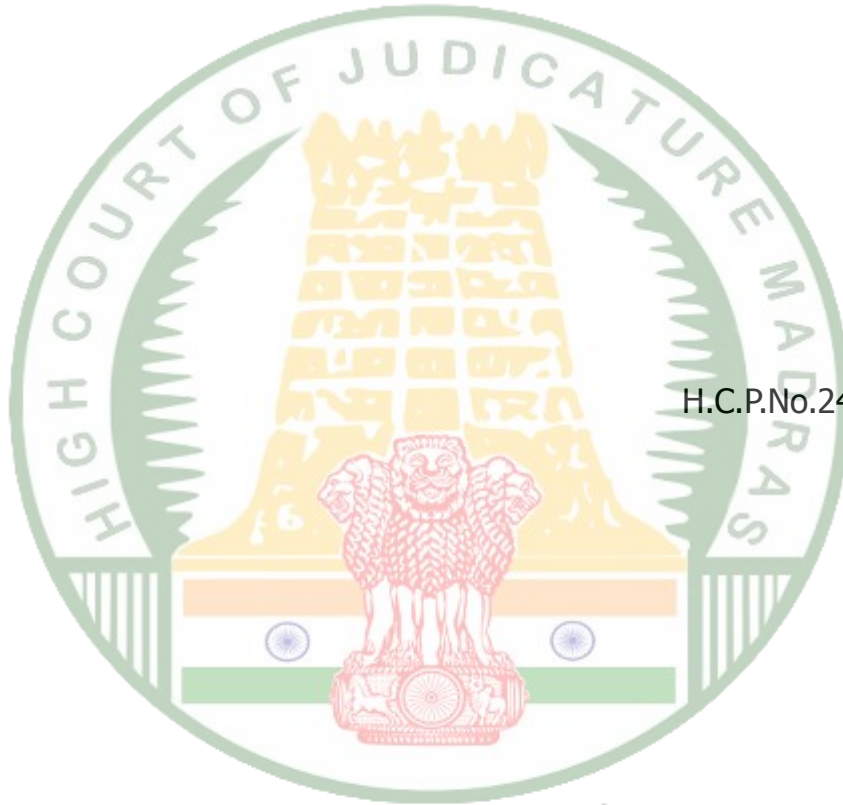
6.The Public Prosecutor,
High Court, Madras.



WEB COPY

A.SELVAM, J.
and
P.KALAIYARASAN, J.

gya



H.C.P.No.2455 of 2017

सत्यमेव जयते

21.03.2018

WEB COPY