

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

AND

THE HON'BLE MRS.JUSTICE M.NIRMAL KUMAR

H.C.P.No.507 of 2018

Thenmozhi

.... Petitioner/wife of detenu

vs.

1.The Government of Tamil Nadu,
rep.by its Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St.George,
Chennai-600 009.

2.The District Magistrate and
District Collector,
Salem District,
Salem.

3.The Additional Secretary to Government
of India, Ministry of Consumer Affairs
Food and Public Distribution Department
of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi-110 001

.... Respondents

Prayer: 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 Second Respondent dated 28.12.2017, No.C.M.P.No.03/PBMMSEC Act/2017 (C2), against the Petitioner's husband Sakthivel, aged about 46 years, who is confined at Central Prison, Salem, and set aside the same and direct the Respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Subhadra Devi

For Respondents : Mr.Pratap Kumar

Additional Public Prosecutor
for R1 and R2

Mr.S.Arokiam,C.G.S.C for R3

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner and the Learned Additional Public Prosecutor for the Respondents 1 and 2 and the Learned Central Government Standing Counsel for the Third Respondent.

2.The Petitioner/Sister of the Detenu, viz., Sakthivel, has focused the instant Habeas Corpus Petition before this Court, seeking to call for the Records in connection with the Detention Order passed by the Second Respondent, dated 28.12.2017, in C.M.P.No.03/PBMMSEC Act/2017(C2), against her Brother-Sakthivel, son of Ponnusamy, aged about 46 years, now confined at Central Prison, Salem and to set aside the same and further to direct the Respondents to produce the Detenu before this Court and set him at liberty.

3.It comes to be known that the Brother of the Petitioner/Detenu, viz., Sakthivel, is involved in the following adverse case.

Salem C.S.CID Crime No.144 of 2017, under Section 6(4) of TNSC (RDSCS) Order 1982, read with 7(1)(a)(ii) of E.C.Act 1955;

4.The Brother of the Petitioner/Detenu, viz., Sakthivel, is involved in the ground case in Crime No.145 of 2017, Civil Supplies, CID, Salem Unit, under Sections 6(4) of TNSC (RDSCS) Order 1982, read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955 and the facts of the Ground Case are set out below:-

On 06.12.2017, at about 17.00 hours, while the Inspector of Civil Supplies, Criminal Investigation Department, Salem Unit was on duty at Nedunkulam area, Koneripatti, Edappadi Taluk, Salem District, on the basis of the Secret information received by him, to unearth hoarding, smuggling and selling of Essential commodities in black market in Salem jurisdiction and when he went near the shed situated nearby the house of Arjunan, at 18.00 hours, on 05.12.2017, the said Arjunan and his associates, who were rowing bags in the shed, had ran away on either side, on seeking the police and escaped. The Inspector of Police untied the bags kept in the shed with the assistance of Police and found about 13,500 Kgs of Public Distribution System Rice, which were issued by the Government to the Public and the same were kept in 270 bags of each weighing about 50 KGs. When the Police party enquired the neighbours, they informed that few persons had brought Public Distribution System Rice bags and hoarded them in the shed for smuggling to other State for selling at higher price. The Inspector of Police has seized 13,500 KGs of Public Distribution System Rice in 270 bags of each weighing 50 KGs on the said date. On 06.12.2017, at 22.30 hours when the Inspector of Police was watching out at Olapalayam area, Kumarpalayam Taluk, Namakkal

District, in order to arrest absconding accused persons in this case, they arrested three persons, viz., Sakthivel, aged 46 years, Marameri Govindan @ Govindaraj, aged 46 years and Elavarasan, aged 39 years and after observing due formalities, a case has been registered in Crime No.145 of 2017 under Section 6 (4) of TNSC (RDCS) Order 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955 against the said persons and others and ultimately, the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980), has been invoked against the Detenu, viz., Sakthivel.

5. According to the Petitioner, her Brother, Sakthivel is not a 'Black Marketeer' and he had not acted in a manner prejudicial to the maintenance of Supplies of Essential Commodities to the community and had not involved in any offence as alleged by the Police.

6. The Learned Counsel for the Petitioner contends that the Impugned Order of Detention dated 28.12.2017, passed in C.M.P.No.03/PBMMSEC Act/2017(C2), by the Second Respondent is an illegal and unconstitutional one. In this connection, the Learned Counsel for the Petitioner strenuously takes a plea that the Representations sent on behalf of the Detenu to the State Government and the Central Government were not considered in a proper and just manner and the delay in considering the Representation violates Article 22 of the Constitution of India. Therefore, the Order of Detention dated 28.12.2018 is liable to be set aside, in the interest of justice.

7. Advancing her arguments, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner had addressed a Representation dated 05.03.2018 to the First Respondent and also to the Third Respondent. The Representation was received by the First Respondent on 06.03.2018.

8. It comes to be known that the remarks were called on the Representation of the Petitioner dated 05.03.2018. The Remarks from the concerned Authority were obtained on 09.04.2018 and the file was submitted to the First Respondent on 10.04.2018. Moreover, the Under Secretary to the Government of Tamil Nadu dealt with the file in issue on 10.04.2018 and the Principal Secretary to the State Government dealt with the file on 10.04.2018. That apart, the Secretary(Law) to the Government of Tamil Nadu dealt with the file on 11.04.2018 and the Hon'ble Minister for Food, Government of Tamil Nadu, dealt with the file on 12.04.2018 and that the Rejection Order was prepared on 13.4.2018 and the said Order was transmitted to the Detenu on 13.4.2018.

9.Expatiating her submission, the Learned Counsel for the Petitioner proceeds to point out that there has been a delay of 40 days and excluding the 10 days Government Holidays (40-10=30 days), there is a delay of 30 days and the same remained unexplained on the part of the First Respondent. To lend support to the contention that the delay of 30 days, which had occasioned in considering the Representation of the Petitioner, dated 05.03.2018 and the Rejection Order being passed on 13.04.2018, the Learned Counsel for the Petitioner seeks in aid of the Division Bench Order of this Court, dated 27.03.2018, in H.C.P.No.88 of 2018 (Rahamath Nisha vs. The Government of Tamil Nadu, rep.by its Secretary and two Others), whereby and whereunder, at Paragraph No.12, it is observed as under:-

"12.On the side of the respondents 1 and 2, a proforma has been submitted, wherein it has been clearly stated that in between Column Nos.7 to 9, four clear working days are available and no explanation has been given on the side of the respondents 1 and 2 and the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India.

10.The Learned Central Government Standing Counsel for the Third Respondent submits that the Representation of the Petitioner dated 05.03.2018 was received on 08.03.2018 and the same was sent to the State Government for obtaining its comments and English/Hindi Versions of the said Representation. In spite of reminder being sent to the State Government, the answering Respondent had not received the English/Hindi Version of the Representation and requisite comments so far.

11.The Learned Counsel for the Petitioner draws the attention of this Court to the Quality Certificate, issued by the Regional Laboratory, Tamil Nadu Civil supplies Corporation, Salem Region, dated 08.12.2017 (found at Page No.280 of the Book-Let furnished to the Detenu), wherein it is mentioned in English as under:

"Certified that the sample has been analysed by me and it belongs to PDS Rice".

In short, the aforesaid analysis of the sample mentioned in English Language was not translated and furnished to the Detenu. As such, it is the crystalline plea of the Petitioner that the Detention Order dated 28.12.2017 passed by the Second Respondent stands vitiated in the eye of Law.

12.Per contra, it is the submission of the Learned

Additional Public Prosecutor for R1 and R2 that the Detenu/Accused had involved in Smuggling, Transporting and Selling the Public Distribution System Rice in Black Market to a higher price for his pecuniary benefits and was arrested and remanded to custody. Moreover, the Detenu is said to be continuously committing the offences and there arose a compelling necessity to detain the Detenu, viz., Sakthivel, under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980) and as such, he was detained by an Order dated 28.12.2017, passed by the Second Respondent/Detaining Authority

13. In short, the plea of the Learned Additional Public Prosecutor for R1 and R2 is that the Detention Order, dated 28.12.2017, was passed by the Second Respondent after analysing all the relevant records.

14. As far as the present case is concerned, though the Petitioner had addressed a Representation dated 05.03.2018 to the First Respondent and it was received by the First Respondent/State Government on 06.3.2018, ultimately, the Rejection Order was prepared on 13.04.2018 and the said Rejection Order was also transmitted to the Detenu on 13.04.2018. In this process, after deducting 10 day Government Holidays, there is a clear cut 30 days unexplained delay in considering the Representation of the Petitioner dated 05.03.2018, by the First Respondent, in the considered opinion of this Court, and the same vitiates the Detention Order dated 28.12.2017 passed by the Second Respondent.

15. Coming to the aspect of Quality Certificate dated 08.12.2017, issued by the Regional Laboratory, Tamil Nadu Civil Supplies Corporation, Salem Region, wherein, the Certificate to the effect that 'sample was analysed and it belongs to PDS', was not translated into Tamil Version and the same was not supplied to the Detenu. The very failure to furnish the Vernacular Language of the Quality Certificate to the Detenu, had resulted in deprivation of the Detenu's right to make an effective and efficacious Representation to the Authority(s) concerned. In this regard also, there is a violation of Article 22(5) of the Constitution of India.

16. In upshot, this Court is of the considered opinion that the Detention Order dated 28.12.2017, passed by the Second Respondent is liable to be quashed and accordingly, it is quashed in furtherance of substantial cause of justice.

17. In fine, this Habeas Corpus Petition is allowed. The detention order dated 28.12.2017, passed in C.M.P.No.03/PBMMSEC Act/2017(C2), by the Second

Respondent/Detaining Authority against the Detenu, viz., Sakthivel, aged 46 years, son of Ponnusamy, residing at No.1/307, East Street, Olapalayam, B.Kumarapalayam Post and Taluk, Namakkal District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Government of Tamil Nadu,
rep.by its Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St.George,
Chennai-600 009.
- 2.The District Magistrate and
District Collector,
Salem District,
Salem.
- 3.The Additional Secretary to Government
of India, Ministry of Consumer Affairs
Food and Public Distribution Department
of Consumer Affairs,
Room No.270, Krishi Bhavan,
New Delhi-110 001
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court, Madras
- 6.The Joint secretary to Government (Law and order)
Secretariat, Chennai-9

+1cc to Mr.S.Arokiam, Advocate, vide sr.36430
+1cc to Mr.R.Subhadra Devi, advocate, sr.36445

H.C.P.No.507 of 2018

SSV(CO)
GSP(12/06/2018)