

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.1771 of 2018

D.Jeba Selvi

... Petitioner

-Vs-

1.The Secretary to Government,
Co-operation, Food & Consumer Protection Department,
Namakkal Kavignar Maaligai, 2nd Floor,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Salem City Commissioner Police,
Salem City.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order in C.M.P.No.1/Black Marketer/Salem City/2018 on 13.08.2018 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner's husband one named C.David, S/o. Chithiraipandiyan, aged about 43 years now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : No Appearance

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

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ORDER

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

The petitioner, who is the wife of the detenu, namely, David, Son of Chithiraipandiyan, age 43 years, challenges the impugned order of detention, dated 13.08.2018 in C.M.P.No.1/Black Marketer/Salem City/2018 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 cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	Salem C.S.CID Crime No.51/2017	6(4) of TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of E.C. Act 1955
2	Salem C.S.CID Crime No.54/2017	6(4) of TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of E.C. Act 1955
3.	Salem C.S.CID Crime No.144/2017	6(4) of TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of E.C. Act 1955
4.	Salem C.S.CID Crime No.145/2017	6(4) of TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of E.C. Act 1955
5.	Coimbatore C.S.CID Crime No.87/2018	6(4) of TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of E.C. Act 1955
6.	Coimbatore C.S.CID Crime No.88/2018	6(4) of TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of E.C. Act 1955

The ground case has been registered against the detenu in Crime No.87/2018 on the file of the Salem C.S.CID, for offences u/s 6 (4) of TNSC (RDCS) Order, 1982 r/w 7(1)a(ii) of E.C.Act, 1955. The detention order has been passed by second respondent in Memo C.M.P.No.1/Black Marketer/Salem City/2018 on 13.08.2018.

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. The Grounds of Detention would reveal that 6 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.87/2018 for the offences u/s

6(4) of TNSC (RDCS) Order, 1982 r/w 7(1)a(ii) of E.C.Act, 1955. Admittedly, the detenu has not moved any bail application in the ground case and all six(6) adverse cases. Therefore, the probability of release of the detenu 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.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.1/Black Marketer/Salem City/2018 dated 13.08.2018, passed by the second respondent is set aside. The detenu, namely, David, Son of Chithiraipandiyan, aged about 43 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Deputy Registrar

//True copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to Government,
Co-operation, Food & Consumer Protection Department,
Namakkal Kavignar Maaligai, 2nd Floor,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Salem City Commissioner Police,
Salem City.
- 3.The Superintendent,
Central Prison,
Salem.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5.The Public Prosecutor
High Court, Madras.

H.C.P.No.1771 of 2018

GMV (11/01/2019)



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