

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

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

H.C.P.No.2011 of 2018

Tmt. Sherifa

... Petitioner

-Vs-

1. The Principal Secretary (FAC),
Government of Tamil Nadu,
Public (S.C) Department,
Secretariat, Chennai - 600 009.
2. The Secretary to Government of India,
Ministry of Finance,
Department of Revenue (COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janapath Bhavan, 'B' Wing, 6th Floor, Janpath,
New Delhi-110 001.
3. The Superintendent of Central Prison,
Puzhal Central Prison II,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention G.O.NO.SR.1/153-2/2018 dated, 27/08/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Iqbal, M/A 38 years, S/O.Abdul Kadhar, who is presently detained in the Central Prison, Puzhal II, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor
for R1 & R3
Mr.Rajinish Pathiyil for R2

ORDER

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

Petitioner, who is the wife of the detenu herein, viz. A.Iqbal, Son of Abdul Kadher, challenges the order of detention passed by the first respondent under order in G.O.No.SR.I/153-2/2018, dated 27.08.2018.

2. We have heard learned counsel for petitioner, learned Additional Public Prosecutor for respondents 1 & 3 as also learned counsel for second respondent. We have also perused the counter affidavit filed by respondents 1 and 3.

3. Paragraph 35 of the order of detention under challenge reads as follows:-

"35. You are informed that you have a right to make a representation to the Detaining Authority / the State Government and also to the Government of India, if you so desire, in writing against the order under which you are kept under detention. If you wish to make such a representation, you should address it to the Secretary to Government of Tamil Nadu, Public (Law & Order) Department, Secretariat, Chennai-600 009 or the Secretary to Government of India, Ministry of Finance, Department of Revenue (COFEPOSA Unit), Central Economic Intelligence Bureau, Janpath Bhavan, 'B' Wing, 6th Floor, Janpath, New Delhi-110 001, as the case may be, and forward it through the Superintendent, Central Prison, Puzhal, Chennai in which you are confined, as expeditiously as possible. Any representation that is made by you will be duly considered by the State or the Central Government, as the case may be, and will also be placed before the State Advisory Board (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act) for consideration of your case under Section 8 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974."

4. The Hon'ble Supreme Court in Kamleshkumar Ishwardas Patel Vs. Union of India and others [(1995) 4 SCC 51] at paragraph 38 has informed as follows:-

"38. Having regard to the provisions of Article 22 (5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to

consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation."

5. A reading of Paragraph 35, reproduced above reflects the failure on the part of the Detaining Authority to inform that a representation may be made to him viz., The Principal Secretary to Government (FAC), Public (S.C.) Department, challenging the order of detention. The Detaining Authority in informing that the detenu may make a representation to the Detaining Authority/State Government and also the Government of India has in effect informed the detenu that he has a right to make representations to two Authorities, whereas, the detenu is entitled to make representations to 3 Authorities i.e., the Detaining Authority, State Government as also the Central Government. The Detaining Authority in stating that the detenu may make a representation to 'the Detaining Authority/State Government' in effect suggests that the right to make representation is alternative in nature i.e., it may be made to the Detaining Authority or the State Government. It is useful to note that while paragraph 35 informs that the representation to State/Central Government is to be made to the Secretary to Government of Tamil Nadu, Public (Law & Order) Department, Secretariat, Chennai-600 009 or the Secretary to Government of India, Ministry of Finance, Department of Revenue (COFEPOSA Unit), Central Economic Intelligence Bureau, Janpath Bhavan, 'B' wing, 6th Floor, Janpath, New Delhi-110 001, there is no mention that the representation to the Detaining Authority is to be made to the Principal Secretary to Government (FAC), Public (S.C.) Department, which is a position which may also be informed by stating that a representation could be made to the "Undersigned".

6. For the aforesaid reason, this Habeas Corpus Petition is allowed and the order of detention in G.O.No.SR.I/153-2/2018,

dated 27.08.2018, passed by the first respondent is set aside. The detenu, namely A.Iqbal, Son of Abdul Kadher, 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

kmi

To:

1. The Principal Secretary (FAC),
Government of Tamil Nadu,
Public (S.C) Department,
Secretariat, Chennai - 600 009.
2. The Secretary to Government of India,
Ministry of Finance,
Department of Revenue (COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janapath Bhavan, 'B' Wing, 6th Floor, Janpath,
New Delhi-110 001.
3. The Superintendent of Central Prison,
Puzhal Central Prison II,
Chennai.
4. The Joint Secretary to Government Public (Law & Order)
Fort St.George, Chennai-09
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Rajinish Pathiyil, Advocate, S.R.No.77206

CS/07/01/2019

H.C.P.No.2011 of 2018

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