

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.03.2018

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM  
AND  
THE HON'BLE MR.JUSTICE M.DHANDAPANI

H.C.P.No.88 of 2018

Rahamath Nisha

.... Petitioner

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 Collector and  
District Magistrate,  
Erode District,  
Erode.

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

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records in Detention Order in No.Cr.M.P.No.25/Black Marketeer/2017/C1, dated 14.12.2017, on the file of the 2<sup>nd</sup> respondent and set aside the same and direct the respondents herein to produce the body of the petitioner's husband, the detenu Kaja alias Kajamohidheen, aged 42 years, son of late Hatheem, now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : M/s.R.Subhadra Devi

For Respondents : Mr.A.Arockiam,C.G.S.C.for R3  
Mr.B.Arulmozhi Maran,G.A.  
For R1 and R2

## 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 Cr.M.P.No.25/Black Marketeer/2017/C1, by the detaining authority against the detenu, by name Kaja alias Kajamoidheen, aged 42 years, S/o (Late) Hatheem, residing at Door No.128, Srinivasapuram Extension, Bhavani, Bhavani Taluk, Erode District and quash the same.

2.The Inspector of Police, Civil Supplies Criminal Investigation Department, Erode Unit, 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 cases.

- i.Erode Civil Supplies Criminal Investigation Department, Crime No.12 of 2012, registered under Section 6(4) of TNSC (RDCS) Order 1982, read with 7(1)(a)(ii) of Essential Commodities Act, 1955.
- ii.Erode Civil Supplies Criminal Investigation Department, Crime No.96 of 2016, registered under Section 6(4) of TNSC (RDCS) Order 1982, read with 7(1)(a)(ii) of Essential Commodities Act, 1955.
- iii.Erode Civil Supplies Criminal Investigation Department, Crime No.54 of 2017, registered under Section 6(4) of TNSC (RDCS) Order 1982, read with 7(1)(a)(ii) of Essential Commodities Act, 1955.
- iv.Erode Civil Supplies Criminal Investigation Department, Crime No.114 of 2017, registered under Section 6(4) of TNSC (RDCS) Order 1982, read with 7(1)(a)(ii) of Essential Commodities Act, 1955.

3. Further, it is averred in the affidavit that on 23.11.2017, at about 23.30 hours, while the Inspector of Civil Supplies Criminal Investigation Department, Erode Unit was on duty, the Inspector of Police, Anthiyur Circle, has produced the persons, namely, Maran and Veeran of Gandhi Nagar, Paruvachi, Bhavani Taluk along with 16 tons of Public Distribution System rice in 320 white colour plastic bags, and also produced a Taurus Tanker Lorry bearing Registration Number KA 01AC 4777 and a white colour Maruti van bearing registration Number TN 37R 6371. After observing due formalities, a case has been registered in Crime No.123 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, requested the detaining authority to invoke the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).

4.The detaining authority, after perusing the averments made in the affidavit and other connected documents, has arrived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a '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 it is averred to the effect that most of the averments made in the petition are false. The sponsoring authority has submitted all the relevant materials to the detaining authority. The detaining authority, after considering all the relevant materials and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a 'Black Marketeer' by way of passing the impugned detention order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

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

(i)In the First Information Report, the name of the detenu is not found place.

(ii)On the side of the detenu, a representation has been given, but the same has not been disposed of without delay.

(iii)The detenu has been furnished with a book-let, in which, page Nos.39 and 40 are not readable and the same would affect the rights of the detenu and therefore, the detention order in question is liable to be quashed.

7. Per contra, the learned Government Advocate appearing for the respondents 1 and 2 has sparingly contended to the effect that in the instant case, the detenu is a habitual offender and further on 23.11.2017, the detenu and others have smuggled 16 tons of Public Distribution System rice, by using a vehicle and under the said circumstances, the Sponsoring Authority has submitted a detailed affidavit along with relevant documents and the detaining authority, after considering all the relevant materials submitted to him, has rightly derived subjective satisfaction and ultimately branded the detenu as 'Black Marketeer' and further the representation alleged to have been submitted on the side of the detenu has been duly disposed of and under the said circumstances, the contentions put forth

on the side of the petitioner are liable to be rejected.

8.The first and foremost contention put forth on the side of the petitioner is that in the First Information Report, the name of the detenu is not found place.

9.It is seen from the detention order that on 23.11.2017, the Inspector of Police, Anthiyur Circle, has produced the persons namely, Maran and Veeran along with 16 tons of Public Distribution System rice to the sponsoring authority and subsequently, investigation has been done by the sponsoring authority and thereafter the name of the detenu has been included.

10.It is a settled principle of law that merely because the name of a particular accused does not find place in the First Information Report, the same would not affect the case of the prosecution. Therefore, the first point raised on the side of the petitioner cannot be accepted and the same is rejected.

11.The second point urged on the side of the petitioner is that on the side of the detenu, a representation has been given, but the same has not been disposed of without delay.

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.

13.The third ground urged on the side of the petitioner is that the detenu has been furnished with a book-let, in which page Nos.39 and 49 are not readable.

14.On the basis of the 3<sup>rd</sup> contention put forth on the side of the petitioner, this Court has perused Page Nos.39 and 40 of the Book-let. As rightly pointed out on the side of the petitioner, both pages are not readable and the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India.

15.It has already pointed out that the representation submitted on the side of the detenu has not been duly disposed of without delay and further page Nos.39 and 40 of the Book-let are also not readable.

16.Considering the defects pointed out supra, this Court is of the view that the detention order in question is liable to be quashed.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 14.12.2017, passed in Cr.M.P.No.25/Black Marketeer/2017/C1, by the detaining authority against the detenu, by name Kaja alias Kajamoidheen, aged 42 years, S/o (late) Hatheem, residing at Door No.128, Srinivasapuram Extension, Bhavani, Bhavani Taluk, Erode 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.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

msk

To

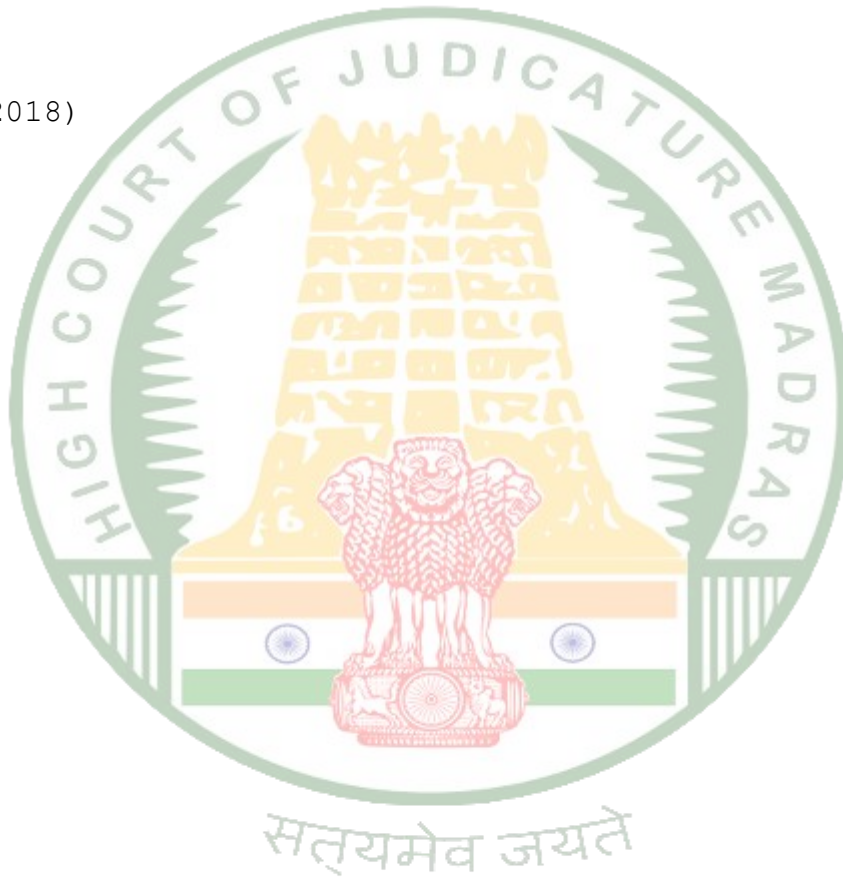
1. The Joint Secretary to Government of Tamil Nadu, Public (Law and Order) Department, Secretariat, Chennai-9.
2. The Secretary to Government Co-operation, Food and Consumer Protection Department, Fort St.George, Chennai-600 009.
3. The District Collector and District Magistrate, Erode District, Erode.
4. 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
5. The Superintendent, Central Prison, Coimbatore.(in duplicate for communication to Detene)

6.The Public Prosecutor,  
High Court, Madras

+1 CC to Mr.S. Arockiam Advocate sr 23202

H.C.P.No.88 of 2018

SP(04/04/2018)



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