

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

H.C.P. No.2115 of 2018

Sakkammal

... Petitioner

-Vs-

- 1.State of Tamil Nadu
Rep. by its Secretary to Government,
Co-operation, Food and Consumer
Protection Department
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.
- 3.Additional Secretary to Government of India
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs)
Room No.270, Krishi Bavan,
New Delhi 110 001.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records, relating to my husband's detention under Black Marketing and Maintenance of Supplies of essential commodities act vide detention order, dated 29.08.2018 on the file of the second respondent herein made in proceedings No.7/2018, quash the same as illegal and consequently direct the respondents herein to produce my husband namely Mahesh @ Maheshwaran, son of Ponnusamy, aged 32 years before this Hon'ble Court and set my husband at liberty from detention, now my husband detained at Central Prison, Puzhal, Chennai - 600 066.

For Petitioner : Mr.C.C.Chellappan

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

ORDER

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

The petitioner is the wife of the detenu, namely, Mahesh @ Maheshwaran, Son of Ponnusamy, age 32 years, challenges the impugned order of detention, dated 29.08.2018 in No.7/2018 detaining her husband as "BLACK MARKETER", as contemplated under sub section 3(2) (b) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980).

2. The ground case has been registered against the detenu in Crime No.256/2018 on the file of the Inspector of Police, Civil Supplies, CID, Chennai Unit 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 No.7/2018 on 29.08.2018.

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 a ground case was registered against him in Cr.No.256/2018 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 moved bail application in the ground case and the same is pending before the Court of Judicial Magistrate No.I, Thiruvallur, in CrI.M.P.No.3482/2018. 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 No.7/BCDFGISSSV/2018 dated 29.08.2018, passed by the second respondent is set aside. The detenu, namely, Mahesh @ Maheshwaran, Son of Ponnusamy, aged about 32 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 and Consumer Protection Department
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.
- 3.Additional Secretary to Government of India
Ministry of Consumer Affairs,
Food and Public Distribution, (Department of Consumer Affairs)
Room No.270, Krishi Bavan,
New Delhi 110 001.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2115 of 2018

GMY (08/02/2019)