



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED**

H.C.P.[MD].No.438 of 2018

Selvamanian @ Iyyappan

: Petitioner

Vs.

1. The Secretary to Government,
Department of Co-operation,
Food and Consumer Protection,
Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The 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.
4. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in M.H.S.Confdl.No.21/2018, dated 16.03.2018 and quash the same and direct the respondents to produce the body and person of the detenu by name Selvamanian @ Iyyappan, S/o.Natarajan, aged about 25 years, now confining at Palayamkottai Central Prison, before this Court and set him at liberty.

For Petitioner
For RR1, 2 and 4

: Mr.R.Alagumani
: Mr.V.Neelakandan
Additional Public Prosecutor

For R3

: Mr.K.Prabhu
Central Government Standing Counsel

**O R D E R**

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

The petitioner is the detenu - Selvamanian @ Iyyappan, S/o.Natarajan, aged about 25 years. The detenu has been detained by the second respondent by his Detention Order in M.H.S.Confdl.No.21/2018, dated 16.03.2018, holding him to be a "Black Martketeer", as contemplated under the Provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No.7 of 1980). The said order is under challenge in this Habeas Corpus Petition.

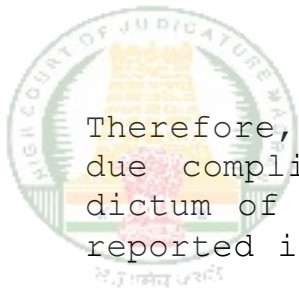
2.We have heard the learned counsel for the petitioner, the learned Additional Public Prosecutor appearing for the respondents 1, 2, and 4 and the learned Central Government Standing Counsel appearing for the third respondent. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the arrest of the detenu in the ground case has been intimated by S.M.S. However, no proof of having done so has been produced.

4.Learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though the arrest of detenu has been intimated through S.M.S., on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. We have considered the above submissions made by the learned counsel on either side and perused the materials placed before us.

6. It is a case, among other grounds, where the learned counsel for the petitioner would urge that the arrest of the detenu in the ground case has not been intimated to the family members or the relatives or to the known persons of the detenu as per the procedure laid down. It is seen that arrest of accused has been intimated through S.M.S. Such Act offences the decision of this Court in **H.C.P.No.1897 of 2015 dated 21.09.2015** in the matter of **Murugeswari v. The State of Tamil Nadu, rep. by its Secretary to Government, Home, Prohibition & Excise Department and others.**



Therefore, the respondents have failed to satisfy this Court on due compliance of Section 50(2) of Cr.P.C., which violates the dictum of Hon'ble Apex Court in **D.K.Basu Vs. State of West Bengal** reported in **AIR (1997) SC 610**.

7. In view of the above decision rendered by the Division Bench of this Court in H.C.P.(MD) No.1897 of 2015 and the decision of the Hon'ble Apex Court in D.K.Basu's case, this Court is of the view that the detention order is unsustainable in law on the ground of intimation of arrest not made effectively and therefore, the right conferred upon detenu to impugn the arrest effected on him is affected. Hence, the detention order is liable to be set aside.

8. In the result, the Detention Order, passed by the second respondent, in his proceedings in Detention Order in M.H.S.Confdl.No.21/2018, dated 16.03.2018, is quashed. The detenu, namely, Selvamanian @ Iyyappan, S/o.Natarajan, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

9. In the upshot, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Department of Co-operation,
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Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
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3. The Additional Secretary to Government of India,
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Room No.270, Krishi Bavan, New Delhi-110 001.
4. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.



5. The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-9.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Alagumani, Advocate Sr.No.68534

Nb

MK/SKN RSK/SAR 1/27.06.2018/4P/8C

ORDER MADE IN
H.C.P.[MD].No.438 of 2018
13.06.2018