



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.06.2018
CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.618 of 2018

Sudha

... Petitioner

Vs.

1.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.

2.The Secretary,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai - 600 009.

3.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

4.The Superintendent,
Central Prison,
Trichy.

5.The Inspector of Police,
Civil Supplies C.I.D.,
Thanjavur Unit,
Thanjavur District.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the order of detention passed by the 3rd Respondent vide his proceedings in P.D.No.16/2018 dated 06.04.2018 and quash the same and consequently set the detenu Sekar @ Rajasekar, S/o. Meenachisundaram, male, aged 37 years who is presently confined at Central Prison, Trichirappalli at liberty.



For Petitioner : Mr.M.Pitchamuthu
For 1st Respondent : Mr.K.Prabhu
Central Government Standing Counsel
For Respondents : Mr.V.Neelakandan
2 to 5 Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

The petitioner is the wife of the detenu viz., Sekar @ Rajasekar, Son of Meenachisundaram, aged about 37 years. The detenu has been detained by order in P.D.No.16/2018 dated 06.04.2018, holding him to be a "Black Marketer", as contemplated under Section 3(2)(a) r/w 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard learned counsel for petitioner, learned Central Government Standing Counsel for first respondent and learned Additional Public Prosecutor appearing for respondents 2 to 5. We have also perused the records produced by the Detaining Authority.

3.Though several grounds have been raised in the Habeas Corpus Petition, 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.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 offends 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.



6. 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 of arrest not made effectively, and therefore the right conferred upon detenu to impugne the arrest effected on him is affected. Hence, the detention order is liable to be set aside.

7. In the result, the Detention Order, passed by the second respondent, in his proceedings in P.D.No.16/2018 dated 06.04.2018, is quashed. The detenu, namely, Sekar alias Rajasekar, son of Meenachisundaram, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

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

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional Secretary,
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Food and Public Distribution,
(Department of Consumer Affairs),
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- 2.The Secretary,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 3.The Principal Secretary to Government.
Home Prohibition and excise Department,
Fort saint George,
Chennai -600 009.
- 4.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 5.The Superintendent,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Prison,
Trichy.



6.The Joint Secretary to Government,
Public (Law and Order)
Fort saint George,
Chennai -600 009.

7.The Inspector of Police,
Civil Supplies C.I.D.,
Thanjavur Unit,
Thanjavur District.

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

+1CC to Mr.K.Prabhu Advocate in SR.No.70036.

SJ

DS/SKN-RSK/SAR-4 :20.07.2018: 4P/10C

H.C.P. (MD) No.618 of 2018
26.06.2018