

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HONOURABLE Mr. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

H.C.P.No.172 of 2019

Nirmala ...Petitioner/Wife of the detenu herein
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 Govt. of India,
Ministry of Consumer Affairs Food and
Public Distribution Dept. of Consumer Affairs,
Room No. 270, Krishi Bhavan,
New Delhi - 110 001. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Detention order in Cr.M.P.No.26/Black Marketer/2018/C1 dated 02.12.2018 on the file of the second respondent and set aside the same and direct the respondents herein to produce the body of the petitioner's husband Prabhu alias Oтраikan Prabhu, son of Selvaraj, aged 31 years, the detenu herein now confined in Central Prison, Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner : M/s.Subhadra Devi

For Respondents: Mr.C.Iyyappa Raj,
Additional Public Prosecutor
for R1 and R2

Mr.S.Arockiam (CGSC) for R3

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner is the wife of the detenu and challenging the impugned order of detention dated 02.12.2018, passed by the second respondent, under Section 3(1) read with 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980, (Central Act 7 of 1980), in and by which, her husband, the detenu herein has been branded as a "Black Marketer" came forward to file the present habeas corpus petition. A perusal of grounds of detention order dated 02.12.2018 would disclose that the detenu came to adverse notice in the following seven cases:

Sl No	Name of the Police station and Crime No.	Section of law
1.	Erode Civil Supplies Criminal Investigation Department Crime No.55 of 2017, dated 01.05.2017	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955
2.	Salem Civil Supplies Criminal Investigation Department Crime No.117 of 2017, dated 24.09.2017	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955
3.	Erode Civil Supplies Criminal Investigation Department Crime No.103 of 2017, dated 27.09.2017	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955
4.	Erode Civil Supplies Criminal Investigation Department Crime No.123 of 2017, dated 23.11.2017	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955
5.	Erode Civil Supplies Criminal Investigation Department Crime No.130 of 2017, dated 19.12.2017	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955
6.	Erode Civil Supplies Criminal Investigation Department Crime No.131 of 2017, dated 20.12.2017	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955
7.	Salem Civil Supplies Criminal Investigation Department Crime No.110 of 2018, dated 01.09.2018	6(4) of TNSC (RDCS) Order 1982 read with section 7 (1) a (ii) Essential commodities Act, 1955

2. It is further alleged in the grounds of detention that on 06.08.2018, at about 13.40 hours, when the Sub Inspector of Police, Civil Supplies Criminal Investigation Department (CSCID), Erode unit received information about smuggling of Public Distribution System rice, immediately he proceeded to Gandhi Nagar area, Kanirowtherkulam, Veerappanchatram, Erode Taluk along with police party and conducted surveillance. At that time, the Sub Inspector of Police found two Omni vans parked near the Madurai Veeran Kovil on Gandhi Nagar and some persons were unloading piled up bags. On suspicion, the Sub-Inspector of Police rushed to the spot along with the police party and on seeing the police party, some of them tried to flee away from the scene of occurrence and some of them were caught whose names were later known as Anthiyur Prabhu, Prakash and Gobi. They revealed that the escaped persons included the detenu also. The contra band of 21 bags of rice meant for Public Distribution System weighing 50 kgs, were also seized from the spot. The arrested accused had also voluntarily come forward to give confession statements and based on the admissible portion of the confession statements, incriminating articles were seized. In this regard, case in Crime No. 91 of 2018 was registered by Civil Supplies Unit, Erode under Section 6(4) of TNSC (RDCS) Order, 1982 read with 8(1) a (ii) Essential Commodities Act, 1955 and the arrested persons were produced before the Court and were remanded to Judicial Custody. Subsequently, to trace the escaped persons, the surveillance was mounted and the detenu was caught at 13.00 hours, on 08.11.2018 and he voluntarily came forward to give confession statement, in and by which, he disclosed certain material facts. The detenu was subsequently arrested in connection with all the cases and produced before the Judicial Magistrate No.3, Erode on 08.11.2018 and was ordered to be remanded in the Judicial custody till 20.11.2018. The Detaining Authority on arriving at the subjective satisfaction, that the activities of the detenu in purchasing the Public Distribution System rice, illegally smuggling it and selling it in the black market amounts to hoarding of the rice meant for Public Distribution System and his activities might endanger social security and stability and pose an imminent threat to social order and having derived such a subjective satisfaction, clamped the impugned order of detention, branding him as a 'Black Marketer' and detained him under Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980. Challenging the legality of the same, the present habeas corpus petition is filed.

3. The learned counsel for the petitioner has drawn the attention of this Court to paragraph no. 5 of the detention order. Admittedly, the detenu is in custody, in connection with

all the adverse cases as well as the ground case and the Detaining Authority in order to arrive at the subjective satisfaction as to the imminent possibility of the detenu coming out on bail and indulging in illegal activities has placed reliance on the bail order of the co-accused in Cr.M.P. No. 4493 of 2018 dated 10.09.2018 and also drawn the attention of the Court to page nos. 372 and 373 of the booklet and would submit that admittedly, in respect of the said case, the accused were not having any antecedents and taking into consideration the quantum of seizure and the period in incarceration undergone by the accused, they were enlarged on bail and in the case on hand, admittedly, the detenu had very many cases by way of antecedents and as there is no imminent possibility of coming out on bail in all cases and indulging in the above said activities which might endanger social security and stability, prays for quashment of the impugned order of detention.

4. Per contra, Mr. C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after taking into consideration the nature and gravity of the offences, especially, the acts of the detenu in indulging in illegal hoarding of the essential commodity rice, which is meant for Public Distribution System has rightly derived at the subjective satisfaction and clamped the order of detention and hence prays for the dismissal of this petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. As rightly pointed out by the learned counsel appearing for the petitioner, the similar case material relied upon by the Detaining Authority in Cr.M.P.No. 4493 of 2018 dated 10.09.2018 pertaining to the co-accused cannot be taken as similar case. A perusal of the order would disclose that the said accused have not got any antecedents and taking into consideration the quantum of seizure and period of incarceration, they were enlarged on bail, whereas, in the case of the present detenu, there are seven adverse cases and one ground case and as such there is no imminent possibility of the detenu coming out on bail and indulging in activities which are prejudicial to the maintenance and supply of essential commodities, and as such the subjective satisfaction arrived at by the Detaining Authority is vitiated. Hence, on this sole ground, the impugned order of detention warrants interference.

7. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent in Cr.M.P.No.26/Black Marketer/2018/C1 dated 02.12.2018 is hereby

set aside. The detenu, viz., Prabhu @ Oтраikan Prabhu, husband of Nirmala, aged 31 years, who is now confined in the Central Prison, Coimbatore, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mbi/kst

To

1. The Secretary,
The Government of Tamil Nadu,
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 Govt. of India,
Ministry of Consumer Affairs Food and
Public Distribution Dept. of Consumer Affairs,
Room No. 270, Krishi Bhavan,
New Delhi - 110 001.
4. The Superintendent Central Prison,
Coimbatore.
5. The Joint Secretary to Government
Public (Law & Order)
Fort St. George,
Chennai - 600 009.

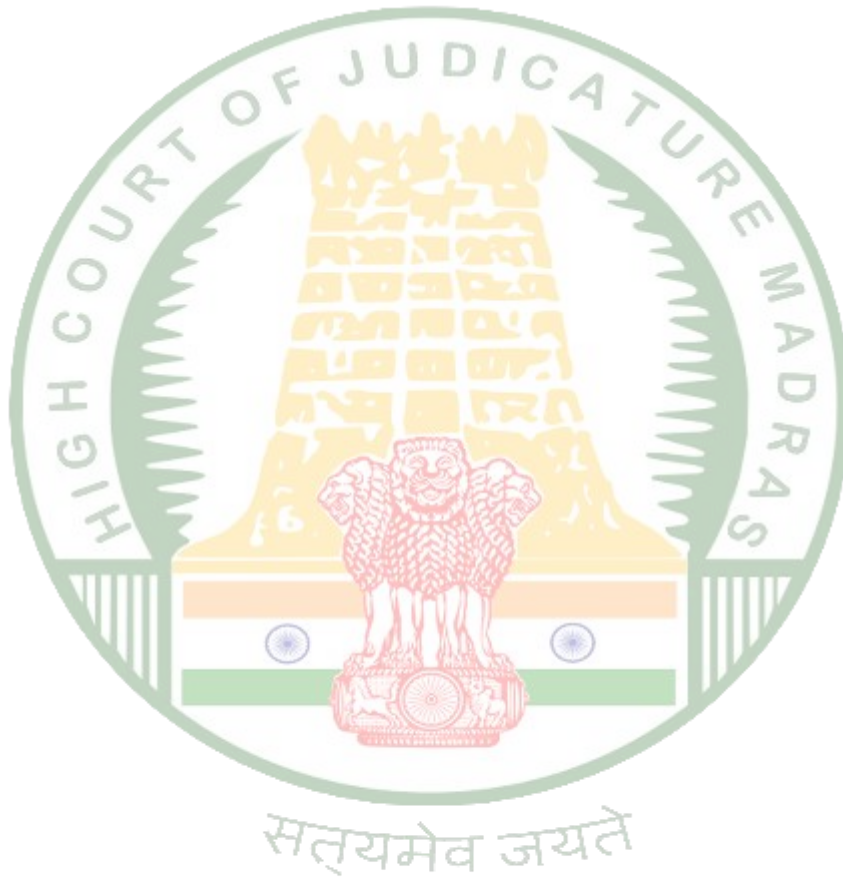
6.The Public Prosecutor,
Madras High Court, Madras.

+1cc to Mr.S.Arockiam, Advocate SR.No.31813

+1cc to Mr.R.Subhadra Devi, Advocate SR.No.32069

H.C.P.No.172 of 2019

RSI (CO)
GMY (30/05/2019)



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