

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 15.04.2019

CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.175 of 2019

Tmt.Lathasree

.. Petitioner

Versus

- 1.Government of Tamil Nadu
rep.by its Principal 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
Department 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 to call for the records in Detention order in Cr.M.P.NO.27/Black Marketer/2018/C1 dated 31.12.2018 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of husband Panneerselvam @ Panneer, son of late Karuppannan, aged 56 years, the detenu herein now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Ms.R.Subhadra Devi

For Respondents: Mr.C.Iyyappa Raj
1 & 2 Additional Public Prosecutor

For R-3 : Mr.S.Arockiam, CGSC.

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the mother of the detenu, who, vide impugned Order of Detention dated 31.12.2018 passed by the 3rd respondent by invoking 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 NO.7 of 1980) in branding the detenu as 'Black Marketer', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following cases:

Sl. No.	Crime No.	Section of law	Date of occurrence
1.	Erode Civil Supplies Criminal Investigation Department Cr.No.20/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	18.02.2018
2.	Erode Civil Supplies Criminal Investigation Department Cr.No.96/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	28.08.2018
3.	Erode Civil Supplies Criminal Investigation Department Cr.No.121/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	08.11.2018

It is further alleged that on 05.12.2018 at about 05.00 hours, on receipt of information, the Inspector of Police, Civil Supplies Criminal Investigation Department, Erode Unit, mounted surveillance and they noticed a Maruthi Omni Van bearing registration number TN 22W 4555 came from the eastern side of the Cauvery River and when they signalled to stop the vehicle, the driver of the vehicle halted at some distance away and tried to escape and the police authorities surrounded them and caught and he disclosed his name as Panneerselvan Alias Panner. On search of the vehicle, they found 600 kgs of Public Distribution System rice packed in 12 bags, each weighting about 50 kgs and the detenu was arrested and he voluntarily came forward to give a confession statement and later on some incriminating articles were seized under the cover of mahazar at about 05.45 hours. Later on, the detenu and the co-accused was brought to the

concerned Police Station and a case in Cr.No.132 of 2018 under Sections 6(4) of TNSC (RDCS) Order 1982 r/w 8(1)(a)(ii) of EC Act 1955 (ground case) was registered. On 05.12.2018, the detenu and co-accused were produced before the Court of Judicial Magistrate No.3 on the same day and they were remanded to judicial custody till 19.12.2018.

3. The Detaining Authority namely, the 3rd respondent on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already came to adverse notice in five cases and his acts are prejudicial to the maintenance of supplies of commodities essential to the community and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing for the petitioner would submit that admittedly the seizure mahazar was prepared at about 05.45 hours and the case in Cr.No.132/2018 pertains to ground case has been registered only at about 08.00 p.m and the Detaining Authority ought to have sought a clarification from the Sponsoring Authority as to the said discrepancy and admittedly, it is not done so and it exhibits non application of mind on the part of the Detaining Authority and the subjective satisfaction derived by the authority is vitiated and hence prays for interference.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence prays for dismissal of this petition.

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

7. As rightly pointed out by the learned counsel for the petitioner, admittedly, the seizure mahazar was prepared at about 5.45 hours on 05.12.2018 and later on, a case in Cr.No.132/2018 was registered at 08.00 hours on the same day and since it is a vital discrepancy, the Detaining Authority ought to have sought a clarification from the Sponsoring Authority and since it was not done, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence on the sole ground, it warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Cr.M.P.NO.27/Black Marketer/2018/C1 dated 31.12.2018 is set aside and the detenu namely Panneerselvam @ Panneer, son of late Karuppannan, aged 56 years, now confined in Central Prison,

Coimbatore is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal 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
Department 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), सत्यमेव जयते
Fort Saint George,
Chennai-9.
- 6.The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Subadra Devi, Advocate, S.R.No.36938
+1cc to Mr.S.Arockiam, Advocate, S.R.No.36997

HCP.No.175 of 2019

EV (CO)

RRS (24/06/2019)