

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.177 of 2019

Tmt.Lakshmi .. Petitioner/Mother of the detenue

Versus

1.The Additional Secretary to 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 Principal Secretary to the Government
Food and Consumer Protection Department
IInd Floor, Namakkal Kavingnar Maaligai,
Secretariat, Chennai 600 009.

3.The Commissioner of Police,
Greater Chennai.

.. 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 connection with the order of detention passed by the 3rd respondent dated 03.01.2019 in his office Ref.B.M.No.01/2019 against the petitioner's son Thiru.Karthick, S/o.Gurusamy, aged about 27 years, now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the above said detenue before this Court and set him at liberty.

For Petitioner : Mr.V.Parthiban
for Mr.E.Kannadasan

For Respondents: Mr.S.Arockiam CGSC for R1

RR 2 & 3 Mr.C.Iyyappa Raj
Additional Public Prosecutor

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 03.01.2019 passed by the 3rd respondent by invoking 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) in branding the detenu as ''Black Marketeer'', 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.	Civil Supplies CID, Chennai Unit Cr.No.168/2018	6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	24.05.2018

It is further alleged in the grounds of detention that the Inspector of Police, Civil Supplies, CID, Chennai and the police team were mounting surveillance to unearth hoarding and smuggling of essential commodities in their jurisdiction and at about 00.15 hours on 19.12.2018, he had received information and urged to the premises bearing No.1/254, Perumal Koil Street, wherein they noticed some persons loading some bags into a Tata Ace Four wheeler bearing Reg.No.Tn-49-AZ-9349 and also found an Apache Motor Cycle bearing Reg.No.TN-15-A-9097 and they apprehended 5 persons, who disclosed their names as Suresh, Manikandan, Sivaperumal, Karuppasamy and Maheshkumar and on search of the vehicle, 120 bags each weighing 50 kgs of PDS rice were attempted to be smuggled and they were apprehended and they voluntarily came forward to give a confession statement, which led to recovery of some incriminating articles and contraband. The Inspector of Police attached to Civil Supplies, CID, Chennai has apprehended the absconding accused namely Karthik (detenu) at about 10.00 a.m on 22.12.2018 and he voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. The detenu was produced before the Court of Judicial Magistrate No.I, Thiruvallur in Civil Supplies, CID, Chennai and he was ordered to be remanded to judicial custody till 04.01.2019.

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 come 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 has drawn the attention of this Court to Inner Paragraph No.9 of the ground case and would submit that at the time of arrest, confession and recovery statement of two witnesses namely Balu son of Subramani and M.Sundaram son of Srinivasan were relied upon and in their statements they would merely state about the smuggling of PDS rice at lower price and hoarding of the same. However in the grounds of detention, further improvement has been made by stating that they are selling it in black market with high profit. Since the specific word / statement as to the smuggling to the neighbouring state and selling it for higher profit did not appear in their statement which are available at page nos.259 and 261 of the booklet, the Detaining Authority atleast ought to have sought clarification from the Sponsoring Authority, but it was not done. That apart, there was non application of mind on the part of the Detaining Authority as to the statements of the said witnesses and hence prays for quashment of the impugned order of detention.

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, in inner paragraph No.9 of the grounds of detention, statement of two witnesses have been relied upon and vernacular version of those statements were available at page nos.259 and 261 of the booklet and would submit that it did not state specifically as to the smuggling of the PDS rice to the neighbouring State and selling it for high profit and whereas, both in the English version as well as in the vernacular version of the statement, improvements have been made by stating that they are selling it in black market with high profit and since, it is a vital discrepancy, the Detaining Authority ought to have sought clarification from the Sponsoring Authority and admittedly it was not done and that apart, it was also exhibits non application of mind on the part of the Detaining Authority to the said statements and hence on the sole ground, the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the third respondent in Ref.B.M.No.01/2019 dated 03.01.2019 is set aside and the detenu, namely Thiru.Karthick, S/o.Gurusamy, aged about 27 years at Central Prison, Puzhal, Chennai 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

sk

To

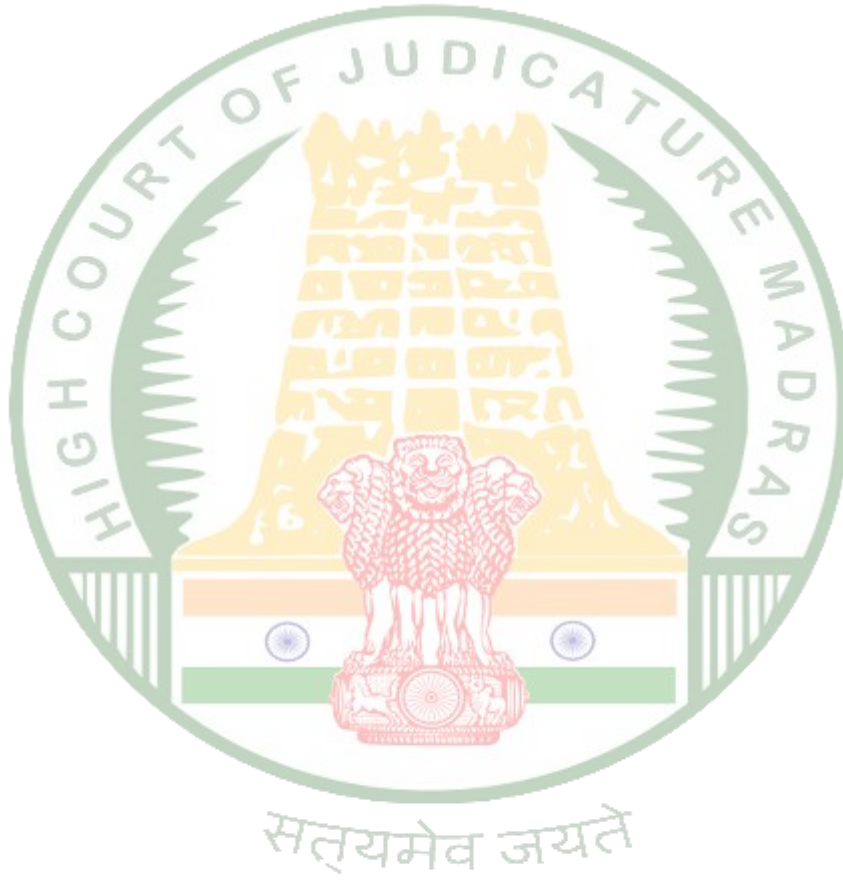
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- 4.The Director General of Police,
Prison, Chennai-8.
- 5.The Additional Director General of Police,
Prison,
Chennai-8.
- 6.The Superintendent,
Central Prison,
Puzhal, Chennai-66.
- 7.The Joint Secretary to Government,
Public(Law & Order)
Fort St.George, Chennai-9.

Copy to:

The Public Prosecutor
High Court, Madras.

HCP.No.177 of 2019

nr 01/07/2019



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