

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.173 of 2019

Tmt.Geetha ... 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 in his office ref.B.M.No.09/2018 dated 31.12.2018 against the petitioner's son namely Thiru.Suresh, S/o.Dhanapal, aged about 30years at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner : Mr.R.Kannadasan

For Respondents: 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 31.12.2018 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 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.	Civil Supplies CID, Krishnagiri Unit Cr.No.04/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	11.01.2018
2.	Civil Supplies CID, Krishnagiri Unit Cr.No.108/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	05.06.2018
3.	Civil Supplies CID, Krishnagiri Unit Cr.No.128/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	09.09.2018
4.	Civil Supplies CID, Krishnagiri Unit Cr.No.182/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	01.10.2018
5.	Civil Supplies CID, Krishnagiri Unit Cr.No.184/2018	6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a) (ii) of EC Act 1955	03.10.2018

It is further alleged that detenu has also involved in the commission of ground case which said to have been taken place at about 12.30 hours on 19.12.2018 and in Paragraph No.3 of the grounds of detention, it is alleged that the Inspector of Police, Civil Supplies, CID, Chennai along with police authorities mounted surveillance to unearth hoarding and smuggling of essential commodities and they noticed some persons loading some bags into a Tata Ace four wheeler bearing Reg.No.TN-49-AZ-9349 as well as Apache motor cycle bearing

Reg.No.TN-15-A-9097 and they apprehended five persons and one of them is the detenu. On search, they found 120 bags, each weighting 50 kgs of PDS rice totally weighing 6000 kgs. and the arrested persons including the detenu, voluntarily came forward to give confession statements, based on the admissible portion of the confession statements, some incriminating articles were seized and a case in Cr.No.391/2018 was registered under Sections 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of EC Act 1955 (ground case). The detenu and other accused were produced before the Court of Judicial Magistrate No.I, Thiruvallur, on 19.12.2018 and were ordered to be remanded to judicial custody till 02.01.2019.

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 attention of this Court to the grounds of detention and would submit that admittedly, the detenu is in custody and he was formally arrested in connection with the adverse cases 2 to 5 and also in the ground case and drawn the attention of this Court to Page Nos.199, 251, 275 and 299 of the booklet and would submit that admittedly, the arrest of the detenu in connection with the said adverse case given only to the jailer and no proof has been adduced to show that the jailer in-turn adduced the said information to the detenu as to the formal arrest in the said cases and the same has also evidenced by the fact that the detenu has filed the application for bail only in connection with the ground case and not in connection with the adverse cases. In the absence of application of mind to such materials, the subjective satisfaction derived by the Detaining Authority as to the real and imminent possibility of the detenu coming out on bail and indulge in activities which are prejudicial to the maintenance of public distribution of essential commodities is wholly vitiated and hence prays for quashment of the same.

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, there is no material to show that the formal arrest of the detenu in connection with the adverse cases 2 to 5 have been informed to the detenu and in the absence of such vital materials, the subjective satisfaction derived by the Detaining Authority is wholly vitiated and 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.09/2018 dated 31.12.2018 is set aside and the detenu, namely Thiru.Suresh, S/o.Dhanapal, aged about 30 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

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Secretary to Government of India
Ministry of Consumer Affairs,
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(Department of Consumer Affairs)
Room No.270, Krishi Bhavan,
New Delhi-110 001.
 - 2.The Principal Secretary to the Government
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IInd Floor, Namakkal Kavingnar Maaligai,
Secretariat, Chennai 600 009.
 - 3.The Commissioner of Police, Greater Chennai.
 - 4.The Superintendent, Central Prison, Puzhal, Chennai - 66.
 - 5.The Joint Secretary,
Public(Law & Order), Fort St.George, Chennai.
 - 6.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.S.Arockiam, Advocate, Sr.No. 36996

HCP.No.173 of 2019

CSL/01.06.2019