

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.219 of 2019

Puvanessvari

.. Petitioner

Versus

1.State of Tamil Nadu
rep.by its Secretary,
Department of Co-operation,
Food and Consumer Protection
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Salem District.

.. 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 relating to the detention order in C.M.P.No.1/Black Marketer/Salem city/2019 dated 10.01.2019 passed by the 2nd respondent under the Central Act 7 of 1980 and set aside the same and direct the respondent to produce the petitioner's husband, P.K.Sampathkumar, S/o.P.s.Kolandaisamy, aged about 46 years, the detenu, now confined in Central Prison, Salem before this Court and set the petitioner's husband P.K.Sampathkumar, S/o.P.S.Kolandaisamy, the detenu herein at liberty.

For Petitioner : Mrs.R.Subadradevi

For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu, who, vide impugned Order of Detention dated 10.01.2019 passed by the 2nd 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 case:

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	Salem C.S.CID Cr.No.144/2017	6(4) TNSC(RDCS) order 1982 r/w 7(1) a(ii) E.C.Act 1955	02.12.2017
2.	Salem C.S.CID Cr.No.145/2017	6(4) TNSC(RDCS) order 1982 r/w 7(1) a(ii) E.C.Act 1955	05.12.2017

It is further alleged in the grounds of detention that Inspector of Police, Civil Supplies CID, Salem, on receipt of secret information, mounting surveillance on 16.07.2018, along with police party and conducted vehicle search with regard to the hoarding and smuggling of essential commodities. At about 09.00 hours on the same day, they intercepted a Maruti Zen Car bearing Registration No.TN 09 AA 0590 and they found 250kgs. of public distribution system rice kept in 5 bags of each containing about 50 kgs. and further, they found person proceeding in Swaraj Mazda Van bearing Registration No.TN 72 A 3198 and the police authorities stopped the vehicle and search was made in respect of the said vehicle also and found 1250 kgs of Public Distribution System rice kept in 25 bags of each containing about 50 kgs. The persons also disclosed their names and identities and they voluntarily came forward to give a confession statements, which led to recovery of some incriminating articles and discovery of facts also. The vehicle along with the seized contraband as well as the persons was brought to the Salem Civil Supplies CID Unit on 16.07.2018 at about 13.45 hours and registered a case in Cr.No.87/2018 for the commission of offence under Section 6(4) TNSC (RDCS) Order, 1982 r/w 7(1)(a)(ii) E.C.Act, 1955 (ground case). On 27.12.2018, the Inspector of Police mounted surveillance, searching out for the absconding accused and they surrounded one persons and examined him and he disclosed his identity as P.K.Sambathkumar / detenu and he voluntarily came forward to give a confession statements, which led to recovery of incriminating articles and discovery of facts. The detenu was produced before the Court of Judicial Magistrate No.2, Salem on 27.012.2018 and he was ordered to be remanded to judicial custody till 10.01.2019 and his bail petition was also dismissed on 08.01.2019. A perusal of page nos.246 and 247 of the booklet would disclose that the arrest intimation was given to the distant relative of the detenu namely Rajavel, Sankakiri Taluk, Salem District and his statement was also available at Page no.319 of the booklet.

3. The Detaining Authority namely, the 2nd 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 two 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 paragraph nos.5 and 6 of the grounds of detention and would submit that as regards the arrest intimation to the distant relative of the detenu, no averment has been found to that effect and though necessary documentary evidence have been enclosed especially with regard to the statement of Mr.Rajavel, it does not made opinion as to how the name of the distant relative has been ascertained and also drawn the attention of this Court to the confession statements said to have been given by the detenu and would submit that the detenu, in his confession statement, did not disclose the name of the alleged distant relative and further that the alleged text message, given to the mobile number of the said Rajavel (No.9443342592) and copy of the text message has also not been furnished and in the absence of the vital materials, the stand taken by the Detaining Authority that the distant relative of the detenu has been furnished as to his arrest, is vitiated 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 statement of the distant relative has also been recorded and it also contains the mobile phone number and as such the guideline given by the D.K. Basu v. State of West Bengal [1997 (1) SCC 416] case has been fully complied with and that apart, the Detaining Authority has fully applied his mind to the entire materials placed 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. A perusal of the confession statements said to have been given by the detenu immediately after his arrest have not disclosed the name of the distant relative namely Rajavel and however, arrest intimation has been given to the distant relative and his statement has also available at page no.319 of the booklet and copy of the text message, said to have been given to the said Rajavel through mobile phone, has not found place in the booklet. In the considered opinion of this Court, in the absence of furnishing of the copies of the text message said to have been given to the nearby relative of the detenu,

the Detaining Authority ought to have sought clarification from the Sponsoring Authority and admittedly, it has not done so and that apart, a copy of the text message said to have been given to the distant relative has also not been furnished 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 second respondent in C.M.P.No.1/Black Marketer/Salem City/2019 dated 10.01.2019 is set aside and the detenu, namely P.K.Sampathkumar, S/o. P.S.Kolandaisamy, aged about 46 years, at Central Prison, Salem is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Department of Co-operation,
Food and Consumer Protection
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Salem District.

3.The Superintendent,
Central Prison,
Salem.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai-9.

5.The Public Prosecutor
High Court, Madras.

HCP.No.219 of 2019

SV(CO)

RRS (25/06/2019)