

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P. No.2534 of 2018

P.Arumugasamy

... Petitioner

-Vs-

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.The Secretary to Government,
Co-Operation, Food & Consumer Protection Department,
Chennai - 600 009. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records, relating to the impugned order of detention passed by the second respondent in Memo No.8/Black Marketing Act/2018 dated 29.08.2018 and set aside the same and consequently direct the respondents to produce the detenu Sekar @ Chandrasekar, S/o.Ponraj, aged about 47 years, petitioner's brother now confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him liberty forthwith.

For Petitioner : Mr.S.Santhanam

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the brother of the detenu, namely, Sekar @ Chandrasekar, Son of Ponraj, aged 47 years, challenges the impugned order of detention, dated 29.08.2018 in No.8/2018 detaining his brother as "Black Marketer", as contemplated under sub section 3(2) (b) r/w 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980).

2. The ground case has been registered against the detenu in Crime No.256/2018 on the file of the Civil Supplies, CID, Chennai Unit, for offences u/s. 6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a)(ii) of E.C Act, 1955. The detention order has been passed by second respondent in No.8/2018 on 29.08.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

5. The Grounds of Detention would reveal that a ground case was registered against him in Cr.No.256/2018 for the offences u/s. 6(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a)(ii) of E.C Act, 1955. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Court of Judicial Magistrate No.I, Thiruvallur, in CrI.M.P.No.3482/2018. Therefore, the probability of release of the detenu imminently does not arise. Hence, we are inclined to set aside the detention order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.8/2018 dated 29.08.2018, passed by the second respondent is set aside. The detenu, namely, Sekar @ Chandrasekar, Son of Ponraj, aged about 47 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.The Secretary to Government,
Co-Operation, Food & Consumer Protection Department,
Chennai - 600 009.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 4.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2534 of 2018

srg 01/02/2019