

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM:

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

H.C.P.No.2563 of 2018

Suleka
W/o.Amsa

... Petitioner

-Vs-

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The District Magistrate and
District Collector, Uthagamandalam,
The Nilgiris District.

3.The Addl. Secretary,
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Dept. of Consumer Affairs),
Room No.270, Krishi Bhawan,
New Delhi - 110 001.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's son detention under Section 3(1) r/w. 3(2)(b) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 (Central Act 7 of 1980), vide detention order, dated 22.10.2017 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.07/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Thellath, S/o.Amsa, aged 38 years before this Hon'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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

ORDER

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

The petitioner, who is the mother of the detenu, namely, Thellath, Son of Amsa, age 38 years, challenges the impugned order of detention, dated 22.10.2018 in Cr.M.P.No.07/2018 (BlackMarketeer) detaining her son as "BLACK MARKETEER", as contemplated under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980, (Act 7 of 1980).

2. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	The Nilgiris Civil Supplies Criminal Investigation Department Crime No.01/2015	Under Section 6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act 1955.
2.	The Nilgiris Civil Supplies Criminal Investigation Department Crime No.37/2018	Under Section 6(4) TNSC (RDCS) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act 1955.

The ground case has been registered against the detenu in Crime No.78/2018 on the file of the Inspector of Police, Civil Supplies Criminal Investigation Department for offences 6(4) T.N.S.C. (R.D.C.S.) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955. The detention order has been passed by second respondent in Cr.M.P.No.07/2018 (BlackMarketeer) on 22.10.2018.

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 two adverse case has been registered against the detenu and a ground case was registered against him in Cr.No.78/2018, for the offences 6 (4) T.N.S.C. (R.D.C.S.) Order 1982 r/w 7(1) a (ii) of Essential Commodities Act, 1955. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Judicial Magistrate Court, Uthagamandalam. 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 Cr.M.P.No.07/2018 (BlackMarketeer) dated 22.10.2018, passed by the second respondent is set aside. The detenu, namely, Thellath, Son of Amsa, aged about 38 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

lpp/kmi

To

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and
District Magistrate, Vellore District,
Vellore - 9.

3. The Public Prosecutor,
High Court, Madras.

4. The Superintendent of Central Prison,
Puzhal, Chennai.

H.C.P.No.2563 of 2018

nr 28/02/2019



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