

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.2954 of 2018

S.Kesavan
S/o.Subramanian

... Petitioner

-Vs-

1.Government of Tamil Nadu
represented by its
Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St.George,
Chennai - 600009.

2.The District Magistrate and District Collector,
Salem District, Salem.

3.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.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the detention order in No.C.M.P.No.05/PBMMSEC Act/2018 (C2) dated 26.11.2018 on the file of second respondent and quash the same and direct the respondents herein to produce the body of petitioner's cousin brother Rajesh, aged 44 years, S/o.M.T.Thomas, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.R.Subhadra Devi

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

O R D E R

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

Petitioner is the brother of detenu Rajesh S/o.M.T.Thomas, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in C.M.P.No.05/PBMMSEC Act/2018 (C2) dated 26.11.2018.

2. The detenu came to adverse notice in the following cases:-

Sl.No .	Police Station and Crime No.	Sections of Law
1.	Erode C.S.CID, Crime No.72/2018	6(4) of TNSC (RDCS) Order, 1982 r/w 7(1) a (ii) of E.C.Act, 1955
2.	Erode C.S.CID, Crime No.91/2018	6(4) of TNSC (RDCS) Order, 1982 r/w 7(1) a (ii) of E.C.Act, 1955
3.	Erode C.S.CID, Crime No.92/2018	6(4) of TNSC (RDCS) Order, 1982 r/w 7(1) a (ii) of E.C.Act, 1955

The alleged ground case has been registered against the detenu in Crime No.110 of 2018 on the file of Erode C.S.CID for offences under sections 6(4) of TNSC (RDCS) Order, 1982 r/w 7(1) a(ii) of E.C.Act, 1955. Aggrieved by the order of detention, the present writ petition has been filed.

3. Amidst several grounds raised, learned counsel for petitioner submits that the detaining authority while noticing that the detenu stands remanded to judicial custody in the ground case, had informed that the detenu has not filed any bail application in the adverse cases. However, the detaining authority had informed that the relatives of the detenu were taking efforts to move application to take him out on bail in the adverse case and therefore, there was a real possibility of his coming out on bail and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. Though the detaining authority has informed of an effort by the relatives to move bail petition for the release of the detenu, there is no material to support such contention.

4. We have heard learned Additional Public Prosecutor on the above submissions and also perused the records.

5. We find that there absolutely is no material which would disclose the likelihood of the relatives of the detenu moving bail petition on his behalf in respect of adverse cases.

Therefore, the non-application of mind and erroneous subjective satisfaction arrived at by the detaining authority is apparent.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Rajesh S/o.M.T.Thomas, made in C.M.P.No.05/PBMMSEC Act/2018 (C2) dated 26.11.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St.George,
Chennai - 600009.
- 2.The District Magistrate and District Collector,
Salem District, Salem.
- 3.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.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Superintendent of Central Prison, Salem.

H.C.P.No.2954 of 2018

GMV (27/02/2019)