

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

H.C.P.NO.1092 OF 2020

Parthiban

..Petitioner

Vs.

State represented by

1. State of Tamil Nadu,
rep.by Secretary to State,
Co-operation, Food & Consumer Protection
Department, 2nd Floor,
Namakkal Kavingnar Maligai,
St George Fort, Chennai-600 009
2. The Commissioner of Police,
Poonamallee High Road,
Vepery, Chennai-600 007
3. The Secretary to Government of India,
Co-operation, Food & Consumer Protection
Department,
Krishi Bhavan, New Delhi-110 011
4. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-600 066
5. Inspector of Police, सत्यमेव जयते
Civil Supplies CID,
Chennai Unit

..Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling upon the production of the records relating to the detention order dated 15.06.2020 made in detention order Memo No.08/Black Marketing Act/2020 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's brother Saravanan, son of Chelladurai, aged about 42 years, branded as Black-Marketeer and now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Mohanraj

For Respondents Mr.R.Prathap Kumar,
: Addl. Public Prosecutor

ORDER

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

The petitioner is the brother of Saravanan, son of Chelladurai, aged about 42 years who is the detenu. The detenu has been detained by the second respondent by his order Memo No.08/Black Marketing Act/2020, dated 15.06.2020, holding him to be a "Black Marketeer", as contemplated under Section 3(2)(b) r/w 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The said order is under challenge in this Habeas Corpus Petition.

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

3.Though many grounds have been raised in the petition, 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. According to the learned counsel appearing for the petitioner, the sponsoring authority has stated in the Arrest Memo at page No. 57 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the family member of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the family member of the detenu. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the detaining authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

4.Per contra, the learned Additional Public Prosecutor would submit that the arrest of the detenu has been intimated to the family member of the detenu through SMS. However we find that there are no material particulars to substantiate the same. This Court has also taken the similar view in such cases that the detention order cannot be sustained.

5.As evidenced from the document in page No.57 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the family member of the detenu through SMS but no materials have been furnished to substantiate that the said intimation was sent through Thapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation and the same would vitiate the order of detention and the same cannot be sustained in the eye of law.

6.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal. The impugned detention order is therefore liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.08/Black Marketing Act/2020, dated 15.06.2020 passed by the second respondent is set aside. The detenu, namely, Saravanan, son of Chelladurai, aged about 42 years is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar(CJ CONF)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

1. The Secretary to Government Prohibition and Excise Department,
Fort St.George, Chennai - 9
2. The Secretary to State,
Co-operation, Food & Consumer Protection
Department, 2nd Floor,
Namakkal Kavingnar Maligai,
St George Fort, Chennai-600 009

3. The Commissioner of Police,
Poonamallee High Road,
Vepery, Chennai-600 007
4. The Secretary to Government of India,
Co-operation, Food & Consumer Protection
Department,
Krishi Bhavan, New Delhi-110 011.
5. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-600 066
6. Inspector of Police,
Civil Supplies CID,
Chennai Unit.
7. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai - 9
8. The Public Prosecutor,
High Court, Madras.

H.C.P. No.1092 of 2020

GP(CO)
KKV/09/12/2020



WEB COPY