



WEB COPY

H.C.P(MD)No.116 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.116 of 2020

Sathya

... Petitioner

Vs.

1.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs, Food and
Public Distribution (Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.

2.The Secretary,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

3.The District Collector and the District Magistrate,
Madurai District,
Madurai.

4.The Inspector of Police,
CSCID,
Madurai.

5.The Superintendent of Prison,
Central Prison,
Madurai.

... 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 pertaining to the order of detention passed by the third respondent in his proceedings in C.M.P.No.1 of 2020 (CS), dated 28.01.2020 and quash the same as illegal and produce the detenu, namely, Muthu @ Gorilla Muthu, son of Solai Thevar, aged about 42 years, now confined in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner
For Respondents

: Mr.T.Lenin Kumar
: Mr.S.Jayasingh for R.1
Mr.K.Dinesh Babu
Additional Public Prosecutor
for R.2 to R.5



ORDER

[Order of the Court was made by **P.N. PRAKASH, J.**]

The petitioner is the wife of the detenu viz., Muthu @ Gorilla Muthu, son of Solai Thevar, aged about 42 years. The detenu has been detained, as per the order of the third respondent, dated 28.01.2020, under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980), branding him as "Black Marketeer". Challenging the same, the petitioner is before this Court in this Habeas Corpus Petition.

2. We have heard the learned Counsel for the petitioner, the learned Standing Counsel for the first respondent and the learned Additional Public Prosecutor for the respondents 2 to 5. We have also perused the records carefully.

3. Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, reads as under:

"3. Power to make orders detaining certain persons. (1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation - For the purposes of this subsection, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means -

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity -

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or



(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a), with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:-

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under Section 8 of the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1), the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

4. The learned Counsel for the petitioner submitted that the aforesaid Section has not been complied with by the detaining authority while passing the detention order and hence, the same is vitiated in law. He also placed reliance on the judgment of this Court in **Sahul Hameed v. Additional Secretary to Government of India** reported in **(2007) 1 MLJ (Cr1) 1089**.



5. Neither the learned Additional Public Prosecutor appearing for the respondents 2 to 5 nor the learned Standing Counsel for the first respondent was able to tell us whether the aforesaid Section has been complied with or not. Under normal circumstances, we would have given sufficient time for them to ascertain the correct position. However, in this case, the detention order was passed on 28.01.2020 and it is valid for a period of six months of which more than 4 months has elapsed. In view of COVID-19 pandemic, it would be very difficult for them to obtain any further instructions.

6. Bearing in mind the above, we proceed on the premise that the same has not been complied with and hence, the detention order is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the third respondent, in C.M.P.No.1 of 2020 (CS), dated 28.01.2020. Consequently, the detenu, namely, Muthu @ Gorilla Muthu, son of Solai Thevar, aged about 42 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rsb/sml

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional Secretary,
Government of India,
Ministry of Consumer Affairs, Food and
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5.The Superintendent of Prison,
Central Prison,
Madurai.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.JEYASINGH, Advocate (SR-13112[F] dated 05/06/2020)

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05.06.2020

VB (17.06.2020) 5P 8C