



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-09-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP NO.14835 OF 2016

AND

WMP NO.12971 OF 2016

C.Vargheese

...Petitioner

VS.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Public (SC) Department,
Fort St. George,
Chennai - 600 009.

2.The Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.

3.The Deputy Director,
Enforcement Directorate,
No.6, Haddows Road,
Shastri Bhavan,
Nungambakkam.
Chennai - 600 006.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents, their men or agents or anyone acting and claiming on behalf of them from arresting, executing the detention order and detaining the petitioner, namely, Mr.Vargheese aged 61 years issued under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities 1974, vide the proceedings in G.O. No.SR.1/64-7/2015



Public (SC) Department dated 21.08.2015 passed by the Detaining Authority namely the first respondent herein under the COFEPOSA Act, 1974, pending disposal of the main writ petition.

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For Petitioner : Mr.R.Ganesh Kumar
For Respondents-1 and 2 : Mr.C.Kathiravan,
Government Advocate.
For Respondent-3 : Mr.P.Parivallal

O R D E R

The relief sought for in the present writ petition is to direct the respondents, their men or agents or anyone acting and claiming on behalf of them from arresting, executing the detention order and detaining the petitioner, namely, Mr.Vargheese aged 61 years issued under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities 1974, vide the proceedings in G.O. No.SR.1/64-7/2015 Public (SC) Department dated 21.08.2015 passed by the Detaining Authority, namely, the first respondent herein under the COFEPOSA Act, 1974, pending disposal of the main writ petition.

2. The relief, as such, sought for cannot be entertained in the writ proceedings under Article 226 of the Constitution of India. Such a pre-detention order is neither contemplated nor can be issued by a Writ Court.

3. The Law in this regard is settled as rightly pointed out by the first and second respondents in their counter-affidavit, which reads as under:-

"The petitioner has not specifically mentioned the case laws wherein Apex Court has held that the order of the preventive detention in the pre-execution stage is very well maintainable and the same can be set aside. But on the issue of pre-detention the law is well settled and the grounds of challenge are exhaustively narrated in Additional Secretary to the Government of India and others vs. Smt.Alka Subhash Gadia and another, reported in 1992 Supp. (1) SCC



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496. In that judgment, it is observed among other things as follows:-

".... the Courts have interfered with them are necessarily very limited in scope and number, viz., where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed; (ii) that it is sought to be executed against a wrong person; (iii) that it is passed for a wrong purpose; (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so."

Further, the Apex Court in similar cases has also held that the pre-execution detention order cannot be challenged and the only remedy is to surrender and seek appropriate remedy before the appropriate Forum."

4. In view of the fact that the relief, as such, sought for in the present writ petition is beyond the scope of consideration of this Court in the writ proceedings and the writ petition stands rejected.

5. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

Svn

To

1.The Secretary to Government,
State of Tamil Nadu,
Public (SC) Department,
Fort St. George, Chennai - 600 009.



2.The Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.

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3.The Deputy Director,
Enforcement Directorate,
No.6, Haddows Road,
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Chennai - 600 006.

+1cc to the Government Pleader SR.No.48584

W.P.No.14835 of 2016

GMR(CO)
RVM(05/10/2021)