



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

H.C.P. (MD) No.891 of 2020

Manjula

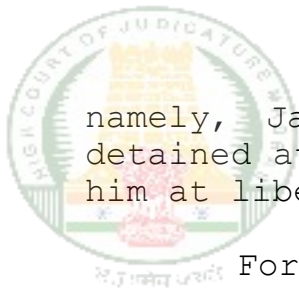
... Petitioner

-vs-

- 1.The Secretary to Government of India,
Food and Consumer Protection Department,
Government of India,
New Delhi-110001.
- 2.The Additional Secretary to
the Government of India,
Department of Consumer Affairs,
Room No.270, Krishi Bhawan,
New Delhi-110001.
- 3.The Secretary to the Government,
Co-operation, Food and Consumer Protection Department,
Namakkal Kavingnar Maligai II Floor,
Secretariate,
Chennai-600 009.
- 4.The District Collector & District Magistrate,
Kanyakumari District,
Nagercoil.
- 5.The Superintendent,
Central Prison,
Palayamkottai.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 4th respondent in P.D.No.29/2020, on 07.10.2020 and quash the same and direct the respondents to produce the body or person of the detenu



namely, James, S/o.Francis @ Kaberiel aged about 39 years (now detained at Central Prison, Palayamkottai) before this Court and set him at liberty.

For Petitioner : Mr.C.Mayilvahana Rajendran
For R1 & 2 :Mr.R.Vijayarajan, CGSC,
for Mrs.Victoria Gowri

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For R3 to R5 : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

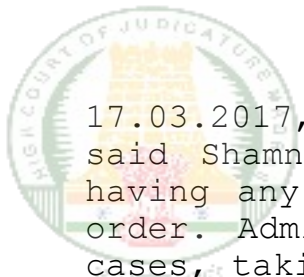
This habeas corpus petition has been filed by the wife of the detenu, namely, James, son of Francis @ Kaberiel, aged about 39 years, challenging the detention order in P.D.No.29/2020 dated 07.10.2020, passed by the fourth respondent, branding him as "Black Marketeer" as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980).

2.Mr.C.Mayilvahana Rajendran, learned counsel for the petitioner, would argue that though the petitioner has raised several grounds, the detention order impugned in the Habeas Corpus Petition is assailed only on the ground that there is a lack of application of mind on the part of the detaining authority to arrive at a subjective satisfaction.

3.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State, on instructions, submitted that while reiterating the averments stated in the counter affidavit filed by the fourth respondent, would argue that the detention order has been raised rightly clamping on the detenu, taking note of the petitioner's antecedent and on being satisfied with the materials served by the sponsoring authority. According to the learned Additional Public Prosecutor, there is no illegality or irregularity in the detention order, warranting interference by this Court.

4.Heard both sides and perused the materials available on record.

5.A perusal of the grounds of the detention order would show that the detenu involved in three adverse cases preceding with the ground case. The detaining authority in reaching the subjective satisfaction has referred to the bail granted to one Shamnath @ Jakku, who was an accused in Cr.No.54 of 2017, on the file of the Inspector of Police, Civil Supplies CID, Kuzhithurai Unit, and he was granted bail by the learned Judicial Magistrate No.III, Nagercoil in CrI.M.P.No.1228 of 2017. In that case, the learned Magistrate considering the fact that the accused was arrested on



17.03.2017, granted bail on 05.04.2017. We could not see that the said Shamnath @ Jakku was having any adverse case and if he is having any adverse case, it would have been mentioned in the bail order. Admittedly, the detenu in the case is having three adverse cases, taking note of the fact his bail application was dismissed by the learned Judicial Magistrate No.III, Nagercoil, in C.M.P.No.3190 of 2020 on 05.10.2020. Therefore, as rightly pointed out by the learned counsel for the petitioner similar case referred to by the detaining authority is not similar to the case of the detenu, which shows lack of application of mind on the part of the detaining authority, on this ground, the impugned order is liable to be set aside.

6.In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.No.29/2020 dated 07.10.2020, passed by the fourth respondent, is set aside. Consequently, the detenu, namely, James, son of Francis @ Kaberiel, aged about 39 years,, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-
Assistant Registrar

/TRUE COPY/

/ /2021
Sub Assistant Registrar

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 Secretary to Government of India,
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- 2.The Additional Secretary to
the Government of India,
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- 3.The Secretary to the Government,
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Secretariate, Chennai-600 009.



4.The District Collector & District Magistrate,
Kanyakumari District,
Nagercoil.

5.The Superintendent,
Central Prison,
Palayamkottai.

6.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-600 009.

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

ORDER MADE IN
H.C.P. (MD) No.891 of 2020
22.01.2021

NS
JM/10.02.2021/4P/8C