



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

H.C.P.NO.201 OF 2022

Kumutha
W/o.Prakash Arunachalam

... Petitioner/Wife
of the Detenue

.Vs.

1. The State represented by its
The Principal Secretary to Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
Secretariat, Chennai - 600 009.
2. The Additional Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
3. The District Collector and District Magistrate,
Office of the District Collector
and District Magistrate,
Erode District.
4. The Superintendent of Police,
Office of the Superintendent of Police,
Erode District.
5. The Superintendent of Prison,
Central Prison, Coimbatore,
Gandhipuram, Coimbatore.
6. The Inspector of Police,
Civil Supplies Criminal
Investigation Department,
Erode Unit.

... Respondents



PRAYER:-

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in detention order in Cr.M.P.No.24/Black Marketer/2021/C1 dated 26.12.2021 on the file of the third respondent herein and set aside the same, direct the respondents herein to produce the body of petitioner's husband, namely, the detenu Prakash s/o.Arunachalam, aged 35 years, before this Court, now confined at Central Prison, Coimbatore and set him at liberty.

For Petitioner : M/s.R.Subadra Devi

For Respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

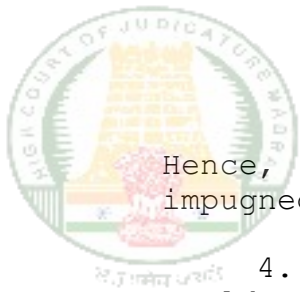
ORDER

[Order of the Court was made by A.A.NAKKIRAN, J]

The petitioner is the Wife of the detenu viz., Prakash s/o.Arunachalam, aged 35 years. The detenu has been detained by the third respondent by his order in Cr.M.P.No.24/Black Marketer/2021/C1 dated 26.12.2021, holding him to be a "Black Marketer", as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 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 page No.94 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the mother of the detenu through SMS. However, there is no material to substantiate the service of arrest intimation stated to have been made to the mother of the detenu through SMS. 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 mother of the detenu through SMS.

5. 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.

6. As evidenced from the document in page No.94 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 mother 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.

7. 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.24/Black Marketer/2021/C1 dated 26.12.2021 passed by the third respondent is set aside. The detenu, viz., Prakash s/o.Arunachalam, aged 35 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gm



To

1. The Principal Secretary to Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavignar Maaligai,
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Gandhipuram, Coimbatore.
6. The Inspector of Police,
Civil Supplies Criminal
Investigation Department,
Erode Unit.
7. The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
8. The Public Prosecutor,
High Court, Madras.

H.C.P.NO.201 OF 2022

RSI (CO)
PBS/26/04/2022