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H.C.P.No.317 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2022

Coram

The Honourable Mr. Justice **S.VAIDYANATHAN**
and
The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

H.C.P.No.317 of 2022

M.Sambath

.. Petitioner

Vs

- 1.The Principal Secretary to Government,
Food and Consumer Protection Department,
Second Floor, Namakkal Kavignar Maligai,
Secretariat, Chennai - 600 009.
- 2.The Secretary to the Government,
Ministry of Consumer Affairs Food and
Public Distribution (Department of Consumer Affairs),
No.270, Krishi Bhavan,
New Delhi – 110 001.
- 3.The District Collector cum
District Magistrate and Detaining Authority,
Cuddalore District, Cuddalore.
- 4.The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore District, Cuddalore.
- 5.The Superintendent,
Central Prison,
Cuddalore.



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6.The Inspector of Police cum Sponsoring Authority,
Civil Supplies CID,
Cuddalore Unit, Cuddalore.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a WRIT OF HABEAS CORPUS or any other writ order or direction in the nature of a Writ of Habeas Corpus to produce the body of the petitioner's brother namely M.Ramachandiran S/o.Mani aged about 51 years, who is detained in 5th respondent/the Superintendent Central Prison, Cuddalore before this Hon`ble Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 18.01.2022 made in No.C3/D.O/03/2022 on the file of the 3rd Respondent herein and Quash the same.

For Petitioner : Mr.D.Muthuselvam

For Respondents : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

ORDER

S.VAIDYANATHAN, J.

and

A.D.JAGADISH CHANDIRA, J.

The petitioner is the brother of the detenu M.Ramachandiran, S/o.Mani, aged 51 years. The detenu has been detained by the third respondent by his order in No.C3/D.O/03/2022 dated 18.01.2022, holding



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him to be a “Black Marketeer” as contemplated under Section 3(2)(a) r/w. Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (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 the Arrest Memo at page Nos.29 and 30 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to the son of the detenu. However, there is no material to substantiate the service of arrest intimation stated to have been made to the son of the detenu. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of



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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 son 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 Nos.29 and 30 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 son 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



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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 No.C3/D.O/03/2022 dated 18.01.2022 passed by the third respondent is set aside. The detenu, viz., M.Ramachandiran, S/o.Mani, aged 51 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(S.V.N., J.) (A.D.J.C., J.)
15.07.2022

Index: Yes/No
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Note: Issue order copy on 15.07.2022.



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