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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2014

CORAM

**THE HONOURABLE MR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE V.S.RAVI**

H.C.P. (MD) No.967 of 2013

Devi ... Petitioner
Vs.

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Co-operation, Food and Consumer
Protection Department,
2nd Floor,Namakkal Kavingnar Maligai,
Secretariat,Chennai - 9.
 - 2.The Secretary to the Government of India,
Co-operation, Food and Consumer
Protection Department,New Delhi - 110 001.
 - 3.The Additional Secretary to the
Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution
(Department of Consumer Affairs),
Room No.270, Krishi Bhavan,
New Delhi - 110 001.
 - 4.The District Collector and District Magistrate,
Theni District, Theni.
 - 5.The Inspector of Police,
Civil Supplies Crime Investigation Department,
Uthamapalayam Unit,
Theni District.
- ... Respondents

Petition filed under Article 226 of the Constitution of India to call for the entire records pertaining to the order of detention passed by the fourth respondent vide his proceedings in Detention Order No.01/2013, dated 25.08.2013, and quash the same and consequently set, the detenu by name K.Kannathasan, S/o.Kannusamy (Male, aged 37 years), who is presently confined at Central Prison, Madurai, at liberty.

For Petitioner : Mr.R.Anand
For Respondents : Mr.C.Ramesh for R1, R4 and R5
Addl. Public Prosecutor
Mr.A.Uthamman, for R2
CGSC
Mr.P.Krishnasamy for R3,CGSC

**ORDER****(Order of the Court was made by V.S.RAVI,J.)**

The petitioner is the wife of the detenu (K.Kannathasan) and she has specifically stated that the said K.Kannathasan has worked as a salesman in G.Kallupatti Fair Price Shop No.I and Devadanapatti Fair Price Shop No.6 and in view of the detention order passed by the fourth respondent, in Detention Order No.01/2013, dated 25.08.2013, her husband has been designed as a "Black Marketer" as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980). She has come forward with the petition before this Court to quash the said order of detention passed by the fourth respondent.

2. Brief averments made in the petition as well as the contention put forth on behalf of the petitioner by the counsel for the petitioner are as follows:-

2.1 The detenu (K.Kannathasan) has worked as a Salesman in G.Kallupatti Fair Price Shop No.1 and Devadanapatti Fair Price Shop No.6. On 15.08.2013, the fifth respondent police came to Devadanapatti Fair Price Shop No.6 and under the garb of inquiring into the matter, forcibly taken the petitioner's husband into their custody and thereafter, the fifth respondent has registered a case in Crime No.280 of 2013 for the offences punishable under Order 6(2)(3)(4) of TNSC (RDCS) Order, 1980 r/w Section 7(i)(a)(ii) of Essential Commodities Act, 1955 as against the petitioner's husband and two others.

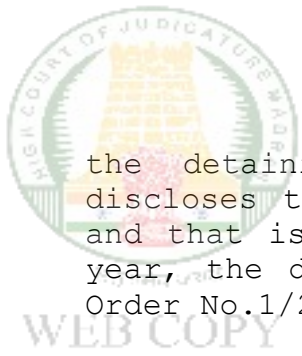
2.2 Thereafter, the fifth respondent, by projecting the above said case in Crime No.280 of 2013, has recommended for the invocation of Act 7 of 1980, which resulted in the issuance of the impugned order of detention by the fourth respondent and the detenu (K.Kannathasan) has been detained at Central Prison, Madurai.

2.3 The grounds of detention have not been informed to the petitioner or any one of the close relatives of the detenu, as such they have been made to be kept under darkness insofar as the petitioner's husband detention is concerned.

2.4 In the present case, the respondents have not considered and disposed of the petitioner's representation, despite the fact that the same has been received before the expiry of 12 days from the date of passing the order of detention, and as such, continuity of the detention order has become lapsed.

2.5 At any cost, a stale incident cannot give room for the detaining authority to proceed for the invocation of Act 7 of 1980 and the detaining authority would adhere in his grounds of detention that there is a real possibility of the detenu coming out on bail by filing bail application which is nothing but based on *ipse dixit* materials.

2.6 The bail orders said to have been passed in the case of one Velmurugan and Suthagar have not been supplied by the detaining authority to the detenu (K.Kannathasan), which makes it very clear that the detaining authority have not been supplied with all the relevant materials by the sponsoring authority. It is relevant here to note that the fourth respondent has not submitted the detailed report to the respondents 1 to 3 within a period of seven days and the way in which the sponsoring authority registered the crime and the manner in which



the detaining authority has passed the detention order, clearly discloses that they have made the detenu (K.Kannathasan) as scapegoat and that is the reason why, as a first case of the detention in this year, the detenu (K.Kannathasan) is being assigned with the Detention Order No.1/2013.

3. Per contra, in the counter affidavit filed by the fourth respondent as well as Mr.C.Ramesh, learned Additional Public Prosecutor on behalf of the respondents, have contended that the detenu (K.Kannathasan) has worked as salesman in G.Kallupatti Fair Price Shop No.I and Devadanapatti Fair Price Shop No.6. On proper application of mind and having satisfied that the detenu (K.Kannathasan) is engaged in hoarding, smuggling and selling of rice meant for public distribution system, which is an essential commodity, and his activities are prejudicial to the maintenance of supplies of commodities essential to the community, the detention order has been correctly passed. The detention of the detenu (K.Kannathasan) is also informed to his wife on 25.08.2013. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of supply of commodities essential to the Public. The sole justification of such detention is adequate suspicion based on proper materials or reasonable probability of the detenu committing some act likely to cause harm to the society.

4. Based upon the contentions of both sides, the following points arise for consideration:

1. Whether the impugned order of detention has been passed in accordance with the provisions of Act 7 of 1980?

2. Whether the order of preventive detention has been passed on proper and valid grounds?

5. Along with the present petition, the petitioner herself has filed the detention order, dated 25.08.2013, passed by the fourth respondent and also grounds of detention both in English and Tamil version. Further, in the petition, it is clearly pointed out that the detenu has worked as salesman in G.Kallupatti Fair Price Shop No.1 and Devadanapatti Fair Price Shop No.6 and the fifth respondent has registered a case in Cr.No.280 of 2013 by projecting the above said case and the fifth respondent has recommended for invocation of provisions of Act 7 of 1980, which resulted in the issuance of the impugned order by the fourth respondent. The fourth respondent has also admitted that the detenu has worked as salesman in G.Kallupatti Fair Price Shop No.1 and Devadanapatti Fair Price Shop No.6 and he has been detained under the provisions of Act 7 of 1980. Further, in the petition, it is clearly pointed out that a stale incident cannot be given room for the detaining authority to proceed for invocation of Act 7 of 1980 and based upon the *ipse dixit* materials, the detaining authority has proceeded for invocation of Act 7 of 1980. Further, it is specifically pointed out in the petition that there is no previous case against the detenu and the detaining authority has mentioned as if he is a habitual offender. Though the fourth respondent has stated in the counter affidavit that the detenu is a Black Marketer and his activities are prejudicial to maintenance of supply of essential



commodities essential to the community and his activities are likely to endanger social security and stability and also pose a imminent threat to social order and in the normal course criminal law will not have the desired effect of effectively preventing him from indulging in such activities, the detaining authority, has not arrived at a subjective satisfaction upon the relevant records.

6. On the other hand, the fourth respondent has admitted in the counter affidavit that the detenu has worked as a salesman in G.Kallupatti Fair Price Shop No.1 and Devadanapatti Fair Price Shop No.6 and the said sole justification of such detention is based on the reasonable probability. Further, the fourth respondent has stated in the grounds of detention that in a similar case, the accused Velmurugan has been released on bail by the learned Judicial Magistrate, Uthamapalayam, in Cr.M.P.No.7096 of 2013. It is not established that the present detenu is a co-accused in the said case, and therefore, no advantage can be taken by the respondents, on the basis of the proceedings taken against some other accused.

7. In support of his contentions, the learned counsel for the petitioner has relied upon the following citations and seeks to set aside the impugned detention order.

(i) In **Kamleshkumar Ishwardas Patel Vs. Union of India and Others [JT 1995 (3) S.C. 639]**, the Hon'ble Supreme Court has specifically held as follows:

"The framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be jealously watched and enforced by the Court."

In this case also, on a careful perusal of materials on record, it is seen that certain minimum safeguards are sought to be enforced by the Court for the protection of the detenu.

(ii) In **T.V.Saravanan Vs. State [2006 (2) SCC 664]**, the Hon'ble Supreme Court has specifically observed as follows:

"In the absence of such material, detention order based on mere *ipse dixit* of detaining authority regarding imminent possibility of detenu's prayer for bail being granted cannot be sustained"

In this case also, the detention order has not been furnished to the detenu with relevant and material records.

(iii) In **J.Sajith Vs. Secretary to Government [2013 (3) MLJ (Cr1.) 234]**, the Division Bench of this Court has apparently held as follow:

"The detaining authority not shown sufficient reasons to conclude that detenu would come out on bail. No proper application of mind by detaining authority and the impugned detention order quashed."

In the present case also the detaining authority has not produced relevant materials to establish that the petitioner is likely come out on bail.



8. The learned Additional Public Prosecutor has relied on the following judgments of the Hon'ble Supreme Court and seeks to dismiss this Habeas Corpus Petition.

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(i) In **David Patrick Ward and Another Vs. Union of India and Others [1992 SCC (Cri) 814]**, the Hon'ble Supreme Court has clearly held as follows:-

"When the authorities have come forward to afford all facilities to the officers of the British High Commission who desire to visit the petitioners in Naini Jail at Allahabad, it cannot be said that they are acting contrary to the view expressed by this Court in A.K. Roy's case as to need of affording facilities to those who desire to meet detenus in jail. However, we are not to be understood as saying that the Court is powerless to examine the conditions of preventive detention under Section 5, where a case warrants such examination. But, in this case, having regard to its facts and a conscious decision taken by the respondents, from the point of view of security, to detain the petitioners in Naini Jail, Allahabad, we do not think we could concede to their request to shift them to Tihar Jail at Delhi, more so, when the counter affidavit indicates that whenever visits are desired by officers of British High Commission, proper arrangement will be made in that behalf.

(ii) In **Senthamilselvi Vs. State of Tamil Nadu and Another [2006 (5) SCC 676]**, the Hon'ble Supreme Court has clearly pointed out as follows:

"The duty of the Court is to see that efficacy of safeguards provided in the law of preventive detention is not lost in mechanical, routine, dull casualness and chill indifference, on the part of the authorities entrusted with their application and there can be no hard-and-fast rule as to the measure of reasonable time for disposal of representation. Therefore, each case has to be considered on its facts."

In present case also it is found out that the conditions of prevention detention have to be examined and having regard to the facts and circumstance, it is seen that the efficacy of safeguards provided in the law of preventive detention have not been followed by the respondent herein, properly.

(iii) In **Subramanian Vs. State of Tamil Nadu and Another [2012 (4) SCC 699]**, the Hon'ble Supreme Court has clearly observed as follows:

" On the basis of the incident and also past incidents mentioned in the grounds of detention, the detaining authority arrived at subjective satisfaction that the detenu was habitually committing crimes and acting in a manner prejudicial to the maintenance of public order."

<https://hcrs.courts.gov.in/hcrs/index.html> In present case it is found that the detenu is not a habitual offender and the fifth respondent has clearly admitted that the detenu has got only one case registered against him.



iv) In (2001) 3 SCC 22 (STATE OF T.N. AND ANOTHER v. BASKAR), the Honourable Apex Court has clearly pointed out as follows:-

"Detention order clearly setting out that respondent and three other persons, all armed with knives, got down from car and attacked the complainant and also terrorised the people who had gathered around and one of them picked up a soda bottle from the nearby shop and hurled the same at the public and that normalcy in the area was completely disrupted as terror and panic had been created at the spot."

However, in the present case, it is found that it is not a case of the respondent, that normalcy has been completely disrupted and therefore, the detention order has been passed.

9. Having considered the facts and circumstance of the present case and the averments of the petitioner raised in the grounds, it is seen that the citation relied on by the learned Additional Public Prosecutor are not applicable to the facts and circumstance of the case and taking note of the ratio laid down by the judgments relied on by the learned counsel for the petitioner, this Court is of the view that the impugned detention order has to be set aside.

10. In the result, the impugned detention order passed by the fourth respondent detaining the detenu, viz., K.Kannathasan, S/o.Kannusamy, made in Detention Order No.01/2013, dated 25.08.2013, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Co-operation, Food and Consumer
Protection Department,
2nd Floor,Namakkal Kavingnar Maligai,
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- 2.The Secretary to the Government of India,
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- 3.The Additional Secretary to the Government of India,
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(Department of Consumer Affairs),
Room No.270, Krishi Bhavan, New Delhi - 110 001.



4.The District Collector and District Magistrate,
Theni District, Theni.

5.The Inspector of Police,
Civil Supplies Crime Investigation Department,
Uthamapalayam Unit,
Theni District.

6.The Superintendent,
Central Prison,
Madurai.

7.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai-9

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

Jikr
AA/03.02.2014/7p- 9c/

ORDER MADE IN
H.C.P. (MD) No.967 of 2013
31.01.2014