

(2013) 03 MAD CK 0149
In the Madras High Court
Case No : H.C.P. No. 2403 of 2012

Abitha Begam

APPELLANT

Vs

Secretary to the Government

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Essential Commodities Act, 1955 — Section 7, 7(1)(a)(ii)
Penal Code, 1860 (IPC) — Section 294(b), 307, 323, 353
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1), 3(2)(a)

Citation : (2013) CriLJ 2699

Hon'ble Judges : M.M. Sundresh, J; M. Jaichandren, J

Bench : Division Bench

Advocate : S. Senthilvel, for the Appellant; D.S. Ravikumar, CGC, A.N. Thambidurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—This Habeas Corpus Petition has been filed to call for the records relating to the proceedings of the third respondent,

dated 17.10.2012, made in proceedings No. C2/25593/2012, and quash the same, and to produce the detenu, namely, Mohamed Ali alias

Mubarak Ali, aged about 48 years, confined in the Central Prison, Cuddalore, before this Court, and to set him at liberty. The petitioner is the wife

of the detenu, Mohamed Ali alias Mubarak Ali, who has been detained, u/s 3(1), read with 3(2)(a) of the Prevention of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980, pursuant to the order passed by the third respondent, in his proceedings No.

C2/25593/2012, dated 17.10.2012. In view of the detention order passed by the third respondent, dated 17.10.2012, the detenu had been

lodged in the Central Prison, Cuddalore, terming him as a "Black Marketer".

2. Even though various grounds had been raised in the Habeas Corpus Petition filed by the petitioner, the learned counsel appearing on behalf of

the petitioner had placed emphasis on the grounds mentioned hereunder, while stating that the impugned detention order, passed by the Detaining

Authority, is bad in the eye of law. He had submitted that there was clear non-application of mind, on the part of the Detaining Authority, while

passing the detention order against the detenu.

3. The learned counsel appearing for the petitioner had referred to paragraph-5 of the grounds of detention, which reads as follows:

I am aware that Thiru. Mohamed Ali alias Mubarak Ali, son of Abdul Wahab was produced before the Judicial Magistrate Court-I, Villupuram, in

Civil Supplies, CID, Cuddalore Unit Crime No. 251/2012 u/s 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act 1955 and 294(b),

353 and 307, IPC on 24.9.2012 at 13.45 hours and remanded to judicial custody and lodged at Central Prison, Cuddalore, till 08.10.2012 as

remand prisoner. On 08.10.2012 the accused should not produced since he was hospitalised sponsoring authority unable to produce the accused

in that day so the accused produced on 15.10.2012 and his remand was extended to 29.10.2012. He has filed bail applications for Civil Supplies,

CID, Cuddalore Unit Crime No. 251/2012 u/s 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act 1955 and 294(b), 353 and 307,

IPC before the Court of Principal District and Sessions Judge, Villuppuram, in Cri M.P. No. 9510/2012 and the same is pending. In a similar case

registered at CS CID, Cuddalore Unit Cr. No. 769/2011, u/s 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act, 1955 and 294(b),

323, 353 and 307, IPC, Thiru. Mohamed Ali alias Mubarak Ali, S/o. Abdul Wahab, S.G. Nagar, Verattikuppam Salai, Villuppuram got

anticipatory bail by the Court of Principal District and Sessions Judge, Villuppuram in Cri. M.P. No. 405 of 2012 dated 9.1.2012. In a case

registered in Cuddalore CS. CID. Cr. No. 732/2011 u/s 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act, 1955 and 294(b),

353 and 307, IPC, Thiru. Nazeer alias Naeer Rahman obtained bail in CMP No. 10391 of 2011 dated 21.10.2011 before the Court of Principal

District and Sessions Judge, Villuppuram. Hence, I infer that it is very likely of his

(Thiru. Mohamed Ali alias Mubarak Ali) coming out on bail in the above Crime No. 251/2012 since bails are granted by the courts in such cases. If he comes out on bail, he will indulge in such further activities in future as well, which will be prejudicial to the maintenance of supplies of commodities essential to the community. 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 supplies of commodities essential to the community. On the materials placed before me, I am satisfied that the said Thiru. Mohamed Ali alias Mubarak Ali, son of Abdul Wahab is a Black Marketer and there is a compelling necessity to detain him in order to prevent him from indulging in the acts which are prejudicial to the maintenance of Supplies of Commodities essential to the community under the provisions of 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

4. In paragraph-5 of the grounds of detention, the Detaining Authority had stated that the detenu is in remand in the Central Prison, Cuddalore, in connection with Civil Supplies, CID, Cuddalore Unit Crime No. 251/2012, u/s 6(4) of TNSC (RDCS) Order 1982, read with 7(1)(a)(ii) of E.C.

Act, 1955 and 294(b), 353 and 307, I.P.C. It had also been stated that the detenu had filed a bail application before the Court of Principal District

and Sessions Judge, Villuppuram, in Crl. M.P. No. 9510 of 2012, and the same is pending. However, in a similar case, registered in CS. CID

Cuddalore Unit Crime No. 769/2011, u/s 6(4) of TNSC (RDCS) Order 1982, read with 7(1)(a)(ii) of E.C. Act, 1955 and 294(b), 353 and 307,

I.P.C., anticipatory bail had been granted to the detenu. Further, it has also been stated that one Nazeer alias Nazeer Rahman, son of Ahmed,

residing at No. 391, Nehruji Road, Villuppuram, Villuppuram District, had been released on bail in a similar case, by the Court of Principal District

and Sessions Judge, Villuppuram, by an order, dated 21.10.2011, in Crl. M.P. No. 10391 of 2011. Further, it is noted that the Detaining

Authority had not given all the necessary details of the cases registered in connection with Civil Supplies, CID, Cuddalore Unit Crime No.

251/2012, pending on the file of the Principal District and Sessions Judge, Villuppuram, and in CS. CID Cuddalore Unit Crime No. 769/2011, on

the file of the Principal District and Sessions Judge, Villupuram. The Detaining Authority has not shown sufficient reasons to substantiate his belief

that there is a likelihood of the detenu coming out on bail by obtaining a bail order from the Court of Principal District and Sessions Judge,

Villupuram. As such, there is non-application of mind, by the detaining authority, in the passing of the impugned detention order, dated

17.10.2012.

5. The learned counsel appearing on behalf of the petitioner had stated that the rejection of the representation, dated 10.10.2012, sent on behalf of

the detenu, had not been reflected in the detention order, dated 17.10.2012, passed by the detaining authority concerned. Hence, the order of

detention, passed by the detaining authority, is vitiated due to non-application of mind. In support of his contention, the learned counsel had relied

on the decision, reported in T.M. Syed Ali and another Vs. State of Tamil Nadu and five others, .

6. Per contra, the learned Additional Public Prosecutor, appearing on behalf of the respondents had submitted that the detention order had been

passed by the detaining authority after arriving at his subjective satisfaction, based on the cogent materials available before him. He had further

submitted that the order of detention passed by the detaining authority does not suffer from non-application of mind by the said authority. He had

further submitted that the representation, dated 10.10.2012, sent on behalf of the detenu, had been rejected by the detaining authority and the

order rejecting the representation had also been duly communicated.

7. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of

the records available, this Court is of the considered view that there has been no proper application of mind, by the detaining authority, in the

passing of the impugned order of detention. The detaining authority had not stated that there was an imminent possibility of the detenu, who is in

custody, coming out on bail and indulging in activities prejudicial to the maintenance of supplies of commodities essential to the public.

8. In a number of decisions this Court had held that cogent materials should be available for the Detaining Authority to arrive at his subjective

satisfaction for the passing of the detention order. The materials available on

record should be sufficient for the Detaining Authority to arrive at his decision that the detenu is likely to be enlarged on bail and that, in such a case, he would indulge in activities, which would be prejudicial to the maintenance of public order or for the supplying of essential commodities to the public. Unless, such materials are available, the decision of the Detaining Authority to detain the detenu, by passing the detention order, would clearly be an indication of non-application of mind on the part of the Detaining Authority, in the passing of the detention order.

8.1 In *A. Murugesan Vs. The Secretary to Government Food, Cooperation and Consumer Protection Department, The District Collector and the District Magistrate, Salem District, Salem and The Additional Secretary to Government of India, Ministry of Consumer Affairs, Food and Public Distribution Department of Consumer Affairs, Government of India*, it had been held that, while no bail application had been filed on behalf of the detenu, before the Court concerned, it would be too early for the detaining authority to record his satisfaction that the detenu is likely to come out on bail or that, if he is let to remain at large, he would indulge in such activities, in future, which would be prejudicial to the maintenance of public order. Unless, cogent materials are available, the subjective satisfaction of the detaining authority would be a clear indication of the non-application of mind by the detaining authority in the passing of the detention order.

8.2 In *Balaji Vs. State of Tamil Nadu and The Commissioner of Police*, a Division Bench of this Court, referring to the decisions, in *Chandru Vs. The Commissioner of Police and State of Tamil Nadu*, and *Chelladurai v. State of Tamil Nadu*, represented by Secretary to Government, Home, Prohibition and Excise Department, Fort St. George, Chennai-600 009, and another, had held that the mere statement of the Detaining Authority, that there is a real possibility of the detenu coming out on bail, especially, when no bail application had been filed on behalf of the detenu, shall not be sufficient to show that the satisfaction recorded by the Detaining Authority is based on cogent materials.

8.3 In *Gowri Vs. The Secretary to Government of Tamil Nadu, Home, Prohibition and Excise Department and The District Collector and District Magistrate*, this Court had held that the subjective satisfaction recorded by the Detaining Authority was without sufficient or cogent materials,

relying on the decision of the Full Bench of this Court, in *Kalaiselvi, G. v. The State of Tamil Nadu* (2007 (5) CTC 657), wherein, it had been

held as follows:

24. From the reading of the aforesaid decisions, it is clear that the conclusion of the Detaining Authority that there is imminent possibility of the

detenu being released on bail must be based on cogent materials and not on the mere ipse dixit of the Detaining Authority. As has been observed

by the Supreme Court, the question as to whether there is possibility of being released on bail depends upon several factors, such as nature of

offence, the stage of the investigation, the availability of statutory bail etc.

9. Even though it had been submitted that the Detaining Authority, the third respondent herein, had considered and rejected the representation

made on behalf of the detenu, dated 10.10.2012, the same has not been reflected in the impugned order of detention, dated 17.10.2012. As such,

it clear that there is no proper application of mind, by the detaining authority, in the passing of the impugned detention order. In such circumstances,

this Court finds it appropriate to quash the impugned detention order, dated 17.10.2012. Accordingly, the impugned detention order, passed by

the third respondent, is quashed, and the Habeas Corpus petition stands allowed. The detenu is directed to be set at liberty, forthwith, unless his

detention is required in connection with any other case or cause.