
(2010) 10 MAD CK 0112
In the Madras High Court
Case No : H.C.P. No. 979 of 2010

Arulmozhi

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)
Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order,
1982 — Section 6(4)

Citation : (2010) 10 MAD CK 0112

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : M. Sankar, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition challenges an order of detention made by the second respondent dated 3.5.2010, whereby the husband

of the petitioner by name Kamaraj was ordered to be detained under the provisions of the Prevention of Black Marketing and Maintenance of

Supplies of Essential Commodities Act 1980, after recording that his activities were prejudicial to the maintenance of supplies of commodities

essential to the community.

2. The Court looked into all the materials available and in particular, the order under challenge, along with the grounds of detention and heard the

learned Counsel for the petitioner.

3. It is not in controversy that pursuant to the recommendations made by the sponsoring authority that the detenu is involved in three adverse cases

namely (1) Salem Civil Supplies Criminal Investigation Department Crime No. 89/2009 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)

(ii) of Essential Commodities Act 1955; (2) Salem Civil Supplies Criminal Investigation Department Crime No. 443/2009 u/s 6(4) of TNSC

(RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955 and (3) Salem City Annathanapatti Police Station Crime No.

255/2010 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955, and also in a ground case registered

by Salem Civil Supplies Criminal Investigation Department in Crime No. 268/2010 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of

Essential Commodities Act 1955 for an occurrence that took place on 21.4.2010 when he was found in possession of 40 bags of PDS rice each

containing 50 Kg., the detaining authority after scrutiny of the entire materials and recording the subjective satisfaction that the activities of the

detenu were prejudicial to the supplies of commodities essential to the community, has made the order under challenge.

4. Advancing arguments on behalf of the petitioner, the learned Counsel submitted that the detenu made an application for bail in CrI.M.P. No.

2197/2010 in Crime No. 268/2010 before the Judicial Magistrate No. II, Salem, and the same came up for consideration on 3.5.2010, and was

also dismissed; that the authority has also passed the order on the very day; that it is pertinent to note that on the day when the order came to be

passed, no further bail application was pending; and that in such circumstances, the observation made by the detaining authority that there was a

real possibility of his coming out on bail, was thoroughly baseless, unfounded and without any material, much less cogent material.

5. Added further the learned Counsel that as far as the third adverse case is concerned, the crime number is actually 255/2010, but in the grounds

of detention, it is mentioned as Crime No. 255/2009; and that in such circumstances, a clarification should have been called for, but not so.

6. The learned Counsel pointing to both English and Tamil versions of the grounds of detention, would contend that in page No. 4 at the end of the

first paragraph, it is found that the entire contraband which was recovered, was sent for analysis, and it was actually affirmed that the rice which

was in the possession of the detenu and recovered, was actually meant for public distribution system as per the analyst's report; that this material is

not found in the English version, and hence an explanation should have been called for, but not done so, and hence the order has got to be set aside.

7. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

8. As far as the ground case in Crime No. 268/2010 is concerned, the detenu moved a bail application before the Judicial Magistrate No. II,

Salem, and the same has also been dismissed on 3.5.2010. The detaining authority has passed the order under challenge on 3.5.2010. It is

pertinent to point out that on the day when the impugned order came to be passed, no bail application was pending before any Court of criminal

law. But, the authority has stated that there was a real possibility of the detenu coming out on bail. This observation is without any basis or material,

much less cogent material, which the law would require. In such circumstances, the order has become defective.

9. As regards the third adverse case, actually the crime number assigned, is 255/2010. But, it is mentioned in the grounds of detention as Crime

No. 255/2009. In such circumstances, the detaining authority should have called for a clarification, but not done so.

10. Above all, in the translated Tamil version of the grounds of detention, it is found that the contraband which was recovered, was sent for

analysis, and as per the analyst's report, the rice which was found in the possession of the detenu and recovered, was actually meant for Public

Distribution System. It remains to be stated that the above material is not found in the English version. In such circumstances, the detaining authority

should have called for an explanation, but failed. For the above reasons, this Court is of the considered opinion that the order has got to be set

aside.

11. In the result, this habeas corpus petition is allowed setting aside the order of the second respondent. The detenu is directed to be set at liberty

forthwith unless his custody is required in connection with any other case.