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**(2011) 01 MAD CK 0164**  
**In the Madras High Court**  
**Case No : H.C.P. No. 1960 of 2010**

|                        |    |            |
|------------------------|----|------------|
| Christopher Raja       | Vs | APPELLANT  |
| The State of Tamilnadu |    | RESPONDENT |

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**Date of Decision :** 04-01-2011

**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 :** (2011) 01 MAD CK 0164

**Hon'ble Judges :** M. Sathyanarayanan, J;M. Chockalingam, J

**Bench :** Division Bench

**Advocate :** R. Subadra Devi, for the Appellant; V.R. Balasubramaniam, Additional Public Prosecutor for RR1 and 2 and V. Kathirvelu, for R3, for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Chockalingam, J.—This petition for issuance of a writ of habeas corpus challenges an order of the second Respondent dated 23.9.2010,

made in Cr. M.P. No. 7/B.M/2010 (E1), whereby the brother of the Petitioner by name Thomas was ordered to be detained under the provisions

of the Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, branding him as a black marketeer.

2. The Court looked into all the materials available and in particular, the order under challenge and heard the learned Counsel for the Petitioner.

3. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the Petitioner's brother Thomas was involved

in three adverse cases namely (1) Pollachi West PS Cr. No. 494/2009 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential

Commodities Act 1955; (2) Anaimalai Police Station Crime No. 25/2010 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of

Essential Commodities Act 1955 and (3) Pollachi Taluk PS Cr. No. 450/2010 u/s 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of

Essential Commodities Act 1955 and also he was found in possession of 30 bags of PDS rice each containing 50 kgs., on 10.9.2010, and

consequent upon the seizure made, a case in Crime No. 550/2010 was registered by Pollachi Town West PS, u/s 6(4) of TNSC (RDCS) Order

1982 read with 7(1)(a)(ii) of Essential Commodities Act 1955, the detaining authority on scrutiny of the entire materials, recorded its subjective

satisfaction that the activities of the detenu were prejudicial to the maintenance of supplies of commodities essential to the community, and hence

made the order under challenge branding him as a black marketeer.

4. The learned Counsel for the Petitioner raised two grounds which, according to him, would suffice to set aside the order.

(i) Actually the ground case was registered by Pollachi Town West PS in Crime No. 550/2010 on 10.9.2010, following the arrest which was

actually made at 11.20 A.M. as could be seen from the arrest card. But, the arrest card alleged to have come into existence at about 11.20 A.M.,

contained Crime No. 550/2010, and hence naturally a reasonable doubt would arise whether the arrest card could have come into existence as put

forth by the department. In such circumstances, a clarification should have been called for, but the authority has failed to do so. On the contrary, it

has recorded its subjective satisfaction even without getting the necessary clarification from the sponsoring authority.

(ii) The detenu was arrested and remanded to judicial custody on 10.9.2010, and he moved for bail before the Judicial Magistrate No. IV,

Coimbatore, in Crl. M.P. No. 2790/2010 and the same was dismissed on 18.9.2010. The impugned order came to be passed on 23.9.2010,

within a short span of 4 or 5 days. But, the authority has observed in the order that there was a real possibility of his coming out on bail which was

without material, much less cogent material.

5. The Court heard the learned Additional Public Prosecutor for the State and also the learned Counsel for the third Respondent on all the above

contentions and paid its anxious consideration on the submissions made.

6. As could be seen above, the detaining authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of supplies of commodities essential to the community, has made the order under challenge. As regards the first ground, the ground case was registered on 10.9.2010, in Crime No. 550/2010 following the arrest made at 11.20 A.M. as could be seen from the arrest card. But, it is pertinent to point out that the arrest card which has come into existence at 11.20 A.M., contained Crime No. 550/2010. In such circumstances, a reasonable doubt would arise whether the arrest card could have come into existence as put forth by the department. The detaining authority should have called for a clarification. But, the authority has recorded the subjective satisfaction even without calling for a clarification in that regard. Hence the order has become infirm.

7. Insofar as the second ground, it is an admitted position that he moved a bail application before the Judicial Magistrate No. IV, Coimbatore, in the ground case, and the same was dismissed on 18.9.2010. While so, the impugned order came to be passed on 23.9.2010 i.e., within 4 or 5 days from the date of dismissal of the bail application. But, the authority has stated in the grounds of detention that there was a real possibility of the detenu coming out on bail which is without material, much less cogent material which the law would require. Under the circumstances, the order has become defective. This Court is of the considered opinion that on both the grounds, the order has got to be set aside.

8. Accordingly, this petition is allowed setting aside the order of detention passed by the second Respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.