
(2013) 04 MAD CK 0047
In the Madras High Court
Case No : H.C.P. No. 83 of 2013

G. Kuppan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)(a)(ii)
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1), 3(2)(a)

Citation : (2013) 2 LW(Cri) 56 : (2013) 2 MLJ(Cri) 801

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

Bench : Division Bench

Advocate : G. Arumugaraja, for the Appellant; M. Mohamed Riyaz, Government Advocate and K. Mageswari, 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 order of the second respondent, dated

22.12.2012, made in D.O. No. 61 of 2012-C2, quash the same, and to produce the petitioner's son, namely, K. Sivaraj, son of Kuppan, aged

about 25 years, confined in the Vellore Central Prison, Vellore, before this Court and to set him at liberty. The detenu, namely, K. Sivaraj, son of

Kuppan, has been detained, u/s 3(1), read with Section 3(2)(a) of the Prevention of Black marketing and Maintenance of Supplies of Essential

Commodities Act, 1980 (Act No. 7 of 1980), pursuant to the order passed by the second respondent, in his proceedings D.O. No. 61 of 2012-

C2, dated 22.12.2012. In view of the detention order passed by the second respondent, dated 22.12.2012, the detenu had been lodged in the

Central Prison, Vellore.

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 on behalf of the petitioner had referred to Paragraph-3 of the grounds of detention, which reads as follows:

3. I am aware that Thiru. K. Sivaraj was remanded in CSCID, Tiruvannamalai Crime No. 348 of 2012 for offences under Sections 6(4) of TNSC

(RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act, 1955. He has moved bail application before the Hon"ble Court of the

Judicial Magistrate No. 1, Tiruvannamalai in CrI.M.P. No. 13075 of 2012 which was dismissed on 14.12.2012. Subsequently, another bail

petition was filed by him before the Hon"ble Court of the Judicial Magistrate No. 1, Tiruvannamalai in M.P. No. 13312 of 2012 which was also

dismissed on 18.12.2012. Again another bail petition was filed by the accused before Tiruvannamalai District and Sessions Judge in M.P. No.

4146 of 2012, and it was also dismissed on 21.12.2012. In a similar case registered in Civil Supplies CID, Tiruvannamalai Unit Crime No. 104 of

2012 for offences under Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act, 1955 against this

accused Thiru. K. Sivaraj, bail was granted by the Hon"ble Court of the Judicial Magistrate Court No. 1, Tiruvannamalai in CrI.M.P. No. 3173 of

2012 on 29.3.2012. Hence, there is real possibility of Tr. Sivaraj to coming out on bail by filing a bail application for the above case in crime No.

348 of 2012 before the appropriate Court. If he comes out on bail, he will indulge in such further prejudicial activities, which will be prejudicial to

the maintenance of supplies of commodities essential to the community. Further, recourse to the normal criminal law will 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 fully satisfied that the said Thiru. Sivaraj is a Black Marketer and there is a compelling

necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of supplies

of commodities essential to the community under the provisions of 3(1) read with 3(2)(a) of the Prevention of Black Marketing and Maintenance

of Supplies of Essential Commodities Act, 1980 (Act 7 of 1980).

4. In paragraph 3 of the grounds of detention, it had been stated that the accused had filed a bail application in Crl. M.P. No. 13075 of 2012, in

the Court of Judicial Magistrate No. 1, Tiruvannamalai, in connection with the case registered in Crime No. 348 of 2012 and that it had been

dismissed by the said Court, on 14.12.2012. Subsequently, another bail petition filed by the detenu before the Judicial Magistrate No. 1,

Tiruvannamalai, in M.P. No. 13312 of 2012, had also been dismissed, on 18.12.2012. The bail petition filed by the accused in the Tiruvannamalai

District and Sessions Judge, in M.P. No. 4146 of 2012, had also been dismissed by the said Court, on 21.12.2012.

5. It had been further stated that the detenu would come out on bail, by filing a bail application in the above case, in crime No. 348 of 2012,

before the appropriate Court. However, no proper reasons had been given by the detaining authority to substantiate his belief that the detenu

would come out on bail. Even though, in paragraph 3 of the grounds of the detention, the detaining authority had stated that in a similar case

registered in Civil Supplies CID, Tiruvannamalai Unit Crime No. 104 of 2012, for offences under Sections 6(4) of TNSC (RDSCS) Order 1982

read with 7(1)(a)(ii) of the Essential Commodities Act, 1955, against the detenu, bail had been granted by the Judicial Magistrate Court No. 1,

Tiruvannamalai, in Crl. M.P. No. 3173 of 2012, on 29.3.2012, the detaining authority had not shown sufficient reasons to come to the conclusion

that the detenu would come out on bail in the case, in Crime No. 348 of 2012, for offences under Sections 6(4) of TNSC (RDSCS) Order 1982

read with 7(1)(a)(ii) of the Essential Commodities Act, 1955.

6. Per contra, the learned counsel 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.

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, it is noted that the detaining authority had not shown sufficient reasons to come to the conclusion that the detenu would come

out on bail in the case, in crime No. 348 of 2012, for offences under Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of the

Essential Commodities Act, 1955.

8. Thus, it is noted that there has been no proper application of mind by the detaining authority, while passing the impugned order of detention,

dated 22.12.2012. Hence, this Court finds it appropriate to quash the impugned detention order, dated 22.12.2012. Accordingly, the impugned

detention order passed by the second 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.