

(2007) 04 MAD CK 0041
In the Madras High Court
Case No : H.C.P. No. 495 of 2007

Karthikumar

APPELLANT

Vs

The Secretary to the Government Food, Co-operation and
Consumer Protection Department, The District Collector and
District Magistrate and The Secretary to Government Food
and Consumer Protection Department, Government of India

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

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

Citation : (2007) 1 LW(Cri) 539

Hon'ble Judges : P.K. Misra, J;J.A.K. Sampath Kumar, J

Bench : Division Bench

Advocate : C. Prakasam, for the Appellant; M. Babu Muthu Meeran, Assistant
Public Prosecutor, for the Respondent

Judgement

P.K. Misra, J.—Heard Mr. C. Prakasam, learned Counsel for the petitioner and Mr. M.Babu Muthu Meeran, learned Additional Public

Prosecutor for the respondents.

2. The order of preventive detention has been challenged by the son of the detenu. The detention order was passed on 12.11.2006 on the ground

that the detenu is a black marketeer within the meaning of Section 3(2)(a) read with 3(1) of the Prevention of Black Marketing and Maintenance of

Supplies of Essential Commodities Act, 1980 (Act No. 7 of 1980).

3. At the time of hearing of the matter, the learned Counsel for the respondent submitted that a Habeas Corpus Petition had been filed on behalf of

the detenu earlier and the same has been rejected. As such, this petition should be rejected on the ground of res judicata. We have gone through

the order passed earlier rejecting the HCP. The only contention in the said HCP was that the detenu was not informed of his right to make a representation. Such contention was negated by the Division Bench as on material it was found that such contention was not sustainable. The contention now raised is different. It is now contended that the satisfaction of the detaining authority regarding the possibility of the detenu coming out of bail in connection with the criminal case is mere ipse dixit of the detaining authority and there is absolutely no material to come to any such conclusion. It appears that in para 3 of the grounds of detention it is recited that, Thiru.Sekar is in Sub-Jail, Usilampatti. He is very likely to come out on bail soon and again he is likely to indulge in such further prejudicial activities in future and therefore, there is a compelling necessity to pass an order of detention against Thiru.Sekar with a view to prevent him from indulging in such prejudicial activities in future...

4. It is apparent that in the previous HCP, this ground has not been raised. It is now well settled that the doctrine of constructive res judicata is not applicable to the preventive detention as has been observed by Division Bench of this Court in HCP No. 663 of 2006 on 30.11.2006. Since the ground urged is different from the ground which was considered earlier, we are inclined to consider the matter on merits.

5. On going through the recital which has been extracted above, it is clear that the detaining authority simply concluded that the detenu is likely to be released on bail very soon without indicating on what basis he came to such conclusion. It has been held by the Full Bench of this Court in a decision reported in 2005 (2) L.W. (Cri.) 946 (K. Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District and Anr.) that while arriving at a particular conclusion relating to the possibility of the detenu being released on bail, the mere ipse dixit will not be sufficient and there should be some material in support of such conclusion. In the present case on hand, we are convinced that there is no materials for coming to the conclusion that the detenu was likely to be released on bail very soon and therefore, the order of detention is quashed.

6. The Habeas Corpus Petition is allowed. Impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.