
(2011) 08 MAD CK 0408
In the Madras High Court
Case No : H.C.P. No. 623 of 2011

Nameesha

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)

Citation : (2012) MLJ(Cri) 56

Hon'ble Judges : M. Sathyanarayanan, J;C. Nagappan, J

Bench : Division Bench

Advocate : N. Doraisamy, for the Appellant; M. Maharaja, Additional Public Prosecutor, N. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

C. Nagappan, J.—The mother of the detenu Yusuff is the petitioner in this habeas corpus petition and she has challenged the order of detention passed by the second respondent in C. No. 05/ PBMMSEC.Act/IS/2011 dated 20.5.2011. The detaining authority relied on as many as two adverse cases viz. (1) Crime No. 564 of 2009 on the file of Coimbatore Civil Supplies C.I.D. and (2) Crime No. 724 of 2010 on the file of Madukkarai Police Station, Coimbatore District and also the ground case in Crime No. 531 of 2011, on the file of Coimbatore Civil Supplies Criminal investigation Department, for the alleged offence u/s 6(4) of T.N.B.C. (RDCS) Order 1982 read with 7(1) a(ii) of E.C. Act 1955, to arrive at a conclusion that the detenu is a Black Marketeer as defined under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Though various grounds have been raised assailing the order of detention, the main submission of the learned Counsel for the petitioner is that the detaining authority has expressed subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case, based on the bail orders passed in the adverse cases as well as in similar cases and the particulars of

similar cases are not mentioned in the grounds of detention and not furnished in the booklet and the satisfaction is not based on cogent material.

3. We also heard the learned Additional Public Prosecutor for respondents 1 and 2 and the learned Central Government Counsel for the third respondent on the said submission.

4. The detaining authority in paragraph 7 of the grounds of detention has observed that the detenu was remanded in the ground case and he has not filed any bail application in the said case, however there is a real possibility of filing a bail application in future in the ground case as in the adverse cases and to come out on bail, since in similar cases the concerned court grants bail after lapse of certain time. The subjective satisfaction expressed by the detaining authority as to the real possibility of the detenu coming out on bail in the ground case, is based on the bail orders passed in the adverse cases as well as in similar cases. The particulars of similar cases are not mentioned in the grounds of detention and not furnished in the booklet. In such circumstances, as rightly contended by the learned Counsel for the petitioner, the subjective satisfaction expressed is only ipse dixit and not based on cogent material and on this ground alone, the order of detention is liable to be set aside. In the result, this habeas corpus petition is allowed, and the impugned order of detention dated 20.5.2011, passed by the second respondent, is set aside. The detenu Yusuff is ordered to be set at liberty forthwith unless his custody is required in connection with any other case.