
(2015) 01 MAD CK 0231
In the Madras High Court
Case No : H.C.P. No. 2336 of 2014

Prasanna Kumar	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)(a)(ii)
Prevention Of Blackmarketing And Maintenance Of Supplies Of Essential Commodities Act, 1980 — Section 3(1), 3(2)(a)

Citation : (2015) 1 MLJ(Cri) 385

Hon'ble Judges : K.B.K. Vasuki, J.;M. Jaichandren, J.

Bench : Division Bench

Advocate : I. Paul Noble Devakumar, for the Appellant; V. Parivallal, S.C.G.S.C. and C. Emalias, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This Habeas Corpus Petition is filed, by the brother of the detenu, namely, Puli @ Puliendran, aged 40 years, son of Munirathnam @ Mancikam, to issue a Writ of Habeas Corpus, to call for the records, in C3. D.O. No. 65 of 2014, dated 17.08.2014, passed by the second Respondent, detaining the detenu, under Section 3(1) read with Section 3(2)(a) of the Prevention of Black Marketing and Maintenance of Essential Commodities Act, 1980 (Act 7 of 1980), in the Central Prison, Vellore, branding him as a "Black Marketeer" and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith. Though several grounds have been raised in this Habeas Corpus Petition, Mr. I. Paul Noble Devakumar, the learned counsel for the petitioner has assailed the impugned detention order only on the ground that out of the three adverse cases against the petitioner in Crime No. 215 of 2013, Crime Nos. 39 and 46 of 2014, the petitioner was released on anticipatory bail in Crime No. 215 of 2013, on the file of the Civil Supplies CID, Vellore; whereas, no bail application was moved in the other two crime numbers. The Detaining Authority, in paragraph No. 5 of the detention order, while referring the anticipatory bail

granted in favour of the petitioner in Crime No. 215 of 2013, omitted to refer about the other two cases, which shows the non-application of mind on the part of the detaining authority and as such, the impugned detention order is liable to be quashed.

2. Per contra, Mr. C. Emallias, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the other two adverse cases are omitted to be mentioned in the detention order, while referring the bail obtained by the petitioner in the other case.

3. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

4. A perusal of the impugned detention order would go to show that in paragraph No. 5 of the Grounds of Detention, while referring to about the three adverse cases against the petitioner in Crime Nos. 215 of 2013 and 39 and 46 of 2014, it is stated that the petitioner has obtained anticipatory bail in Crime No. 215 of 2013 under Section 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act, 1955, in CrI. O.P. No. 27833 of 2013, on 6.11.2013; however other two adverse cases were omitted to be mentioned by the detaining authority. There is no mention in the detention order as to whether any step was taken to move bail application in other two adverse cases. In the absence of any particulars in this regard and any material to show that the detenu is likely to come out on bail in other two cases, the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu in coming out on bail, is baseless and unfounded and is on total non application of mind, as such, the same stands vitiated.

5. The Division Bench of our High Court headed by one of us in the decisions reported in (i) Jothi Nathan Vs. The State--> and (ii) G. Kuppan Vs. State of Tamil Nadu and Others, had dealt with similar situation regarding want of particulars and materials in support of subjective satisfaction purportedly arrived at by the detaining authority that the detenu is likely to be enlarged on bail and he would indulge in activities, which would be prejudicial to the maintenance of public order. It is held in the judgment reported in Jothi v. Secretary to the Government, State of Tamil Nadu, Home, Prohibition and Excise Department, Chennai-9 (supra) that in the absence of sufficient and cogent materials for the Detaining Authority to arrive at his conclusion would be a mere ipse dixit. In other judgment reported in G. Kuppan v. State of Tamil Nadu represented by its Secretary Co-operative Food and Consumer Production Department, Government of Tamil Nadu, Fort St. George, Chennai (supra), it is observed that the failure to state sufficient reasons to conclude that the detenu would come out on bail shows non application of mind by the detaining authority, while passing the

impugned order. In both the cases, the detention order for the reasons stated above, was held to be vitiated and was quashed.

6. As already analysed by us, in the facts and circumstances of the present case, non-mentioning of the other two adverse cases against the detenu has the effect of vitiating the impugned detention order. Further, due to such failure, when bail applications are moved in the other two cases, there is no imminent possibility of the detenu coming out on bail and thereby, he has lost his valuable right.

7. In the light of the above judgments and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.