

(2008) 11 MAD CK 0084
In the Madras High Court
Case No : H.C.P. No. 1141 of 2008

Sangeetha

APPELLANT

Vs

District Magistrate and District Collector and State of Tamil
Nadu

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 161
Essential Commodities Act, 1955 — Section 7(1)
Penal Code, 1860 (IPC) — Section 307, 332, 403, 420, 506
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities
Act, 1980 — Section 3(1), 3(2)
Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order,
1982 — Rule 6(4)

Citation : (2008) 11 MAD CK 0084

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : R. Sunil Kumar, for the Appellant; N.R. Elango, Assistant Public
Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Challenging the correctness of the order of detention, dated 30.06.2008, passed by the first respondent, wife of the

detenu has filed this Habeas Corpus Petition.

2. As per the order of detention passed by the first respondent, it is seen that there are two adverse cases pending against the detenu. The first

case was registered in Cr. No. 652 of 2008 on the file of the Vellore Civil Supplies CID Unit under Rule 6(4) of TNSC (RDCS) Order 1982 r/w

Section 7(1)(a)(ii) of E.C Act, 1955 and Section 403 IPC. As per the first ground case, 227 bags of PDS rice, each containing approximately 50

Kgs were seized from the detenu and others under a cover of mahazar and the case is under investigation. As per the second adverse case

registered in Cr. No. 975 of 2008 on the file of the Vellore Civil Supplies CID Unit under Rule 6(4) of TNSC (RDCS) Order 1982 r/w Section

7(1)(a)(ii) of E.C Act, 1955 and Sections 403 and 420 IPC, the petitioner was allegedly transporting 50 bags of PDS rice on 16.06.2008 and it is

also under investigation.

3. As per the ground case, on 24.06.2008, the detenu had indulged in smuggling 55 bags of PDS rice, each containing approximately 50 kgs to

Andhra Pradesh and Karnataka State, which was seized under the cover of mahazar in the presence of independent witnesses and the case in Cr.

No. 999 of 2008 on the file of the Vellore Civil Supplies CID Unit under Rule 6(4) of TNSC (RDCS) Order 1982 r/w Section 7(1)(a)(ii) of E.C

Act, 1955 and Sections 403, 332, 506(ii) and 307 IPC was registered. As stated in the FIR, the petitioner attacked the police officials during the

seizure of the rice bags at his premises.

4. As per the detention order, the Sub-Inspector of Police and the Head Constable, who sustained injuries were sent to Government Vellore

Medical College Hospital, Adukkamparai, Vellore. Based on the materials placed before the detaining authority, after having subjective

satisfaction, the detention order was passed by the authority u/s 3(1) r/w 3(2) (a) of the Prevention of Black Marketing and Maintenance of

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

5. The petitioner has challenged the detention order on the ground that there are lapses in the order, apart from non-application of mind, which

would vitiate the detention order. The petitioner has further stated that the detaining authority had not furnished the typed set along with the

detention order. Though the detention order was passed on 30.06.2008, the paper book containing details about the ground case was furnished to

the detenu only on 05.07.2008 and there is a delay of six days in furnishing the paper book. According to the petitioner, in the typed set some of

the pages containing details in English could not be understood by the detenu and the translated Tamil version of some of the papers were not

furnished to the detenu. Learned Counsel for the petitioner has not specifically pointed out any such defective translation. The petitioner has also

disputed the genuineness of the confession statement, said to have been given by the detenu and recorded u/s 161 of the Code of Criminal

Procedure on 24.06.2008. The bail petition filed by the detenu in Cr.M.P. No. 5078 of 2008 before the learned District and Sessions Judge,

Vellore was dismissed as early as on 03.07.2008, after hearing both sides. The petitioner has further submitted that the case was registered only

for the purpose of detaining the husband of the petitioner under Act 7 of 1980.

6. Mr. N.R. Elango, learned Additional Public Prosecutor appearing for the respondents submitted that the detaining authority has followed all the

mandatory provisions, which are required to be followed, as contemplated under the Prevention of Black Marketing and Maintenance of Supplies

of Essential Commodities Act, 1980 (Act 7 of 1980). The detenu is facing two adverse cases, one was registered on 26.04.2008 by Vellore Civil

Supplies CID Unit in Cr. No. 652 of 2008, wherein 227 bags of PDS rice, each weighing approximately 50 kgs were recovered under the cover

of mahazar in the presence of independent witnesses. Similarly, on 16.06.2008, a case in Cr. No. 975 of 2008 on the file of the Vellore Civil

Supplies CID Unit was registered for having found 50 bags of PDS rice, each containing approximately 50 kgs, being transported. The said rice

bags were seized under the cover of mahazar. According to him, as stated in the ground case, on 24.06.2008, when the Sub-Inspector of Police

along with his party proceeded to Vada Pudupattu in search of the detenu, the detenu was standing in front of his house, when the police party

tried to secure him, he attacked Head Constable 713 and other persons in the police party. Only on the confession statement given by the detenu,

55 bags of PDS rice each containing nearly 50 kgs were seized and during the seizure, he attacked the police officials. The PDS rice and the iron

rod were seized under the cover of mahazar and the case in Cr. No. 999 of 2008 under Rule 6(4) of TNSC (RDSCS) Order 1982 r/w Section

7(1)(a)(ii) of E.C Act, 1955 and Sections 403, 332, 506(ii) & 307 IPC was registered.

7. On verification, it is seen that copies of all the relied on documents by the Detaining Authority have been furnished to the detenu without delay.

As contended by the Additional Public Prosecutor, we are of the view that there is no defective or improper translated copy in Tamil furnished, so

as to prevent the detenu from making an effective representation.

8. According to the petitioner, the detention order was prepared in advance, even before registering the FIR in Cr. No. 999 of 2008, but the

aforesaid allegation was not substantiated by any materials. In the grounds of the affidavit, the petitioner has stated that the Cr. No. 966 of 2008

does not tally with any of the case filed against the detenu, but at page number 47, the FIR Number of the case is stated as 999 of 2008. As per

the Doctor's Certificate, dated 24.06.2008 issued to Saminathan, Head Constable, he was found with injuries due to the assault made by one

unknown person at Vada Pudupattu around 10 a.m.

9. The learned Counsel appearing for the petitioner contended that the injured has stated before the doctor that he was caused injury by one

unknown person, therefore, which could not have been caused by the detenu. But we are of the view that the word unknown person available in

the Doctor's Certificate could not be a contradiction go to the root of the case, since there is no dispute in the document with regard to the nature

of injury sustained by the defacto complainant, place, date and time of the occurrence and there are sufficient materials to establish the seizure of

55 bags of PDS rice, under the cover of mahazar in the presence of witnesses and further, there are two similar adverse cases pending against the

petitioner. The other grounds raised by the learned Counsel appearing for the petitioner are trivial in nature and also not supported by any material,

hence, we are of the view that it cannot be held that the order of detention suffers due to non-application of mind of the detaining authority.

10. The Hon'ble Apex Court in the decision, Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, , has categorically held that the

burden of establishing that the detention is in accordance with law has always been placed by the Court on the detaining authority because Article

21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with

procedure established by law.

11. As per the ruling of the Hon'ble Supreme Court in Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others, , it is enough for

the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not

illegal or wrongful and that the petitioner is not entitled to the relief claimed. Therefore the detaining authority must explain his subjective satisfaction and the grounds therefor.

12. As per the ruling of the Hon'ble Apex Court in Ibrahim Nazeer v. State of T.N and Anr. reported in 2006 (3) SCC (Cri) 17, subjective satisfaction of the authority is the important factor, while passing the detention order.

13. If the detaining authority is satisfied that he being enlarged on bail could be prejudicial to the maintenance of the public order, that is enough for passing orders. However, it is well settled that preventive detention is not beyond judicial scrutiny, even in respect of subjective satisfaction of the detaining authority.

14. In the instant case, on the facts and circumstances, we are of the considered view that sufficient materials have been placed before the detaining authority to have subjective satisfaction and the copies of all the relied on documents were furnished to the detenu, without any delay. It is also clear from the impugned order that the detaining authority having considered all the materials placed before him, has got subjective satisfaction.

Hence, we are of the considered view that the adverse cases pending against the detenu and the materials available to establish the ground case are sufficient for the Detaining Authority to have subjective satisfaction in passing the detention order. Therefore, we could find no illegality or material infirmity in the impugned order, which would warrant the interference of this Court. On the aforesaid circumstances, we hold that the Habeas Corpus Petition fails and accordingly, the same is liable to be dismissed.

15. In the result, the Habeas Corpus Petition is dismissed. No costs.