

Abdullah Vs. Additional Secretary to the Government of India

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Court : Chennai

Decided On : Apr-22-2013

Judge : M.Jaichandren

Appellant : Abdullah

Respondent : Additional Secretary to the Government of India

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

22. 4.2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE M.M.SUNDRESH H.C.P.No.257 of 2013 Abdullah .. Petitioner Versus 1. The Additional Secretary Government of India Ministry of Consumer affairs Food and Public Distribution (Department of Consumer affairs) Room No.270, Krishi Bhavan New Delh

001. 2. The Secretary Government of Tamil Nadu Co-operation, Food and Consumer Protection Department Secretariat, Chenna

3. The District Magistrate and District Collector Coimbatore District Coimbatore 4. The Inspector of Police C.S.CID, Pollachi Coimbatore District .. Respondents Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the third respondent in his proceedings Cr.M.P.No.7/BM/2013 (E1) dated 5.2.2013 and quash the same as illegal and produce the detenu, namely,

Safiullah, son of Mohamed Abdul Kadar, aged about 54 years, now he is confined in central prison, Coimbatore. For Petitioner : Mr.T.Lenin Kumar For Respondents : Mr.M.Mohamed Riyaz Government Advocate O R D E R (Order of the Court was made by M.Jaichandren,J.) This Habeas Corpus Petition has been filed to call for the records relating to the order of the third respondent, dated 5.2.2013, made in proceedings not Cr.M.P.No.7/BM/2013 (E1), quash the same, and to produce the petitioner's father, namely, Safiullah, son of Mohamed Abdul Kadar, aged about 54 years, confined in the Central Prison, Coimbatore, before this Court, and to set him at liberty.

2. The detenu, namely, Safiullah, son of Mohamed Abdul Kadar, has been detained, under Section 3(1), read with Section 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980), pursuant to the order passed by the third respondent, in his proceedings, bearing proceedings not Cr.M.P.No.7/BM/2013 (E1), dated 5.2.2013. In view of the detention order passed by the third respondent, dated 5.2.2013, the detenu had been lodged in the Central Prison, Coimbatore.

3. Even though various grounds had been raised by the petitioner, in the present Habeas Corpus petition, while challenging the order of detention, passed by the third respondent, the learned counsel appearing on behalf of the petitioner had submitted that the order of detention passed by the third respondent, on 5.2.2013, is liable to be set aside, on the ground of non-application of mind on the part of the detaining authority.

4. The main contention of the learned counsel appearing on behalf of the petitioner is that the detaining authority, while passing the impugned order of detention, dated 5.2.2013, had not applied his mind properly. In order to substantiate the said claim, the learned counsel appearing on behalf of the petitioner had referred to the averments made in paragraph No.5 of the grounds of detention, which reads as follows:- "5. I am aware that Thiru.Safiullah was produced before the Judicial Magistrate Court not IV, Coimbatore in Pollachi Civil Supplies Criminal Investigation Department Cr.No.06/2013 under section 6(4) of T.N.S.C. (RDSCS) Order 1982 r/w 7(1)a(ii) of E.C. Act 1955 on 7.01.2013 at 6.00 P.M. and lodged at

Central Prison, Coimbatore till 21.01.13 as remand prisoner. Further, his remand period has been extended till 04.02.13. Further his remand period has been extended till 18.02.13. Thiru Safiullah has filed a bail application before Judicial Magistrate not IV Court, Coimbatore in Pollachi Civil Supplies Criminal Investigation Department Cr.No.06/2013 under Section 6(4) of T.N.S.C. [RDCS] Order 1982 r/w.7[1]a[iii] of E.C. Act 1955 in CMP No.151/2013 and the same was dismissed on 28.01.2013. Further, he has filed a bail application before the District and Sessions Court, Coimbatore in C.M.P.No.332/2013 and the same was pending. In a similar case registered in Pollachi Civil Supplies Criminal Investigation Department Crime No.111/2012 under Section 6(4) of T.N.S.C. (RDCS) order 1982 r/w 7(1)a(ii) of E.C. Act 1955 bail was granted to the accused Thiru Kutti Rajendran @ Rajendran by the Hon'ble High Court, Chennai in Crml.O.P.No.15893/2012 on 06.07.2012. I infer that there is a real possibility of Thiru Safiullah coming out on bail in Pollachi Civil Supplies Criminal Investigation Department Cr.No.06/2013 under Section 6(4) of T.N.S.C. (RDCS) order 1982 r/w 7(1) a (ii) of E.C. Act 1955, since bails are being granted by the courts in such cases. If he comes out on bail, he is likely to indulge in such further prejudicial activities in future. Therefore, there is a compelling necessity to pass an order of detention against him with a view to prevent him from indulging in such prejudicial activities in future. Further the recourse to 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 Essential Commodities to the community. On the materials placed before me, I am satisfied that Thiru Safiullah is a "Black Marketeer" and there is a compelling necessity to detain him under the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 in order to prevent him from indulging in such acts in future which will be prejudicial to the maintenance of supplies of commodities essential to the community." 5. Even though the detaining authority had stated, in paragraph No.5 of the grounds of detention, that in a similar case registered in Pollachi Civil Supplies Criminal Investigation Department, in Crime No.111/2012, under Section 6(4) of T.N.S.C. (RDCS) order 1982, read with 7(1) a (ii) of E.C. Act, 1955, bail was granted to the accused, namely, Kutti Rajendran @ Rajendran, by this Court, in Crl.O.P.No.15893/2012, on 06.07.2012, the detaining authority had

failed to furnish a copy of the bail application and papers relating to the similar case to the detenu. Thus, the non-supply of the relevant document would vitiate the order of detention, dated 5.2.2013. Further, it is clear that the detenu did not have sufficient opportunity to make an effective representation, against the impugned order of detention, as he had not been furnished with the relevant document. In these circumstances, we are of the view that it would not be appropriate for the detaining authority to state that there is a likelihood of the detenu coming out on bail, in the ground case, since bails are granted, by the courts, in such cases. Hence, we are of the considered view that the detaining authority had passed the impugned order of detention, dated 5.2.2013, without proper application of mind. 6. In such circumstances, the impugned detention order, passed by the third respondent, dated 5.2.2013, is set aside and this Habeas Corpus Petition is allowed. Consequently, the detenu is directed to be set at liberty, forthwith, unless his detention is required in connection with any other case or cause. **lan To 1. The Additional Secretary Government of India Ministry of Consumer affairs Food and Public Distribution (Department of Consumer affairs) Room No.270, Krishi Bhavan New Delh**

001. **2. The Secretary Government of Tamil Nadu Co-operation, Food and Consumer Protection Department Secretariat, Chenna**

3. The District Magistrate and District Collector Coimbatore District Coimbatore 4. The Inspector of Police C.S.CID, Pollachi Coimbatore District 5. The Public Prosecutor High Court Chennai

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