

(2009) 08 MAD CK 0118

In the Madras High Court

Case No : Habeas Corpus Petition No. 960 of 2009

A. Thirupathi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1), 4(1A)

Citation : (2009) 08 MAD CK 0118

Hon'ble Judges : V. Dhanapalan, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : S. Saravanakumar, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner is the son of the detenu. The challenge in this habeas corpus petition is to the order of detention

dated 11.06.2009 passed by the second respondent branding the detenu viz., Koni Oosi @ Ayyakannu, son of Pallikondan as a "Bootlegger

under Sub-section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,

Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. There were as many as five adverse cases against the detenu apart from the ground case. In all the adverse cases, the detenu was charged u/s

4(1)(a) of the Tamilnadu Prohibition Act, 1937 and all the cases are pending trial. In the ground case, it is alleged that on 26.05.2009 at 10.00

hours when the Inspector of Police, Prohibition Enforcement Wing, Tirukoilur conducted a prohibition raid at Thiagarajapuram Village based on

the information received by him. He caught the detenu aged about 52 years red-handed behind his house with a green colour plastic pot when he was found pouring some kind of liquid in a plastic tumbler and supplying it to persons by receiving money. The police party took the detenu under custody while others escaped. They have also seized one green colour plastic pot (15 litres capacity) with 10 litres of arrack with poisonous odor, one green colour plastic tumbler and sale proceeds of Rs. 50/-. The smell of the arrack was said to have irritated the eyes and also created vomiting sensation and poisonous odor. Since the detenu was not holding any permit or licence, it was presumed that he was selling illicit arrack. The detenu was said to have been arrested at 10.00 hours after intimating him of the cause for his arrest and the contrabands were also seized under a cover of mahazar in the presence of witnesses. A case in Crime No. 782 of 2009 was said to have been registered u/s 4(1)(aaa) and 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act, 1937. The detenu was produced before the learned Magistrate on 26.05.2009 and he was remanded to judicial custody till 09.06.2009. The said remand was subsequently extended upto 23.06.2009. The detenu was lodged in the Central Prison, Cuddalore. The three bottles out of six sample bottles were said to have been sent for chemical analysis along with the Judicial Magistrate's letter dated 27.05.2009 to the Assistant Director, Regional Forensic Science Laboratory, Villupuram and in their letter dated 29.05.2009, the said laboratory authorities informed that the samples found to contain ethyl alcohols, acids, esters, higher alcohol, aldehydes and atropine and that the arrack was mixed with atropine, which is a poisonous substance. It is in the abovesaid background, the impugned order of detention came to be clamped on the detenu.

3. Mr. S. Saravanakumar, learned Counsel appearing for the petitioner raised two contentions. In the first place, he contended that in paragraph 3 of the detention order, the detaining authority made a specific statement to the effect that the detenu was produced before the learned Judicial Magistrate, Sankarapuram on 26.05.2009 along with the seized properties and remand report and that the learned Magistrate ordered his remand for judicial custody till 09.06.2009. By pointing out to the said statement and while drawing our attention to the remand report found at page 88 of

the booklet, the learned Counsel contended that the remand report would disclose that the detenu was produced before the learned Magistrate on 26.05.2009 at 20.00 hours and that the learned Magistrate remanded him to judicial custody till 09.06.2009. Learned Counsel also drew our attention to Form 95 found at Page 90 of the booklet, which was admittedly received by the learned Magistrate, Sankarapuram on 27.05.2009 in C.P. No. 45 of 2009. The said document is the proof for having produced the seized materials, which were said to have been seized along with the detenu on 26.05.2009 at 10.00 hours. By pointing out the above referred to material documents, the learned Counsel contended that when as per the remand report, the seized materials were not placed before the learned Magistrate and the endorsement found in Form 95 that the seized materials were received by the learned Magistrate only on the next day i.e. on 27.05.2009, the reference made by the detaining authority in the detention order to the effect that the detenu was produced before the learned Magistrate along with the seized properties was incorrect statement and that the said factor by itself disclosed that there was total non application of mind on the part of the detaining authority while passing the impugned order of detention.

4. That apart, the learned Counsel for the petitioner also contended that the detenu made a representation on 17.06.2009 and there was considerable delay in disposing of the said representation. In the pro-forma placed before us by the learned Additional Public Prosecutor, we find that the representation dated 17.06.2009 was placed before the Hon''ble Minister for Law, who dealt with the same on 01.07.2009. Thereafter, the rejection letter was said to have been prepared only on 10.07.2009. Even by taking into account 04.07.2009 and 05.07.2009, which are Saturday and Sunday, we find there was six days gap in the passing of the rejection order dated 10.07.2009 after the Hon''ble Law Minister passed his orders on 01.07.2009.

5. Considering the above factors and after hearing the learned Additional Public Prosecutor, we are convinced that on the ground of non application of mind as well as on the ground of undue delay in the disposal of the representation, the petition deserves to be allowed. As rightly pointed out by the learned Counsel for the petitioner that in the remand report,

there is no reference to the production of the seized materials along with the detenu on 26.05.2009. Form 95 on the other hand disclosed that the seized materials were placed before the learned Magistrate only on 27.05.2009. In the said circumstances, the statement of the detaining authority that the detenu was produced before the learned Magistrate on 26.05.2009 along with the seized materials was admittedly a wrong statement not in consonance with what the records disclose. When the arrest of the detenu was on the specific charge of his involvement in the preparation and sale of illicit arrack containing poisonous substance of atropine, the seized materials are very relevant material objects, which would support the ultimate case of the prosecution as against the detenu. When that be so, the failure to note the dates with reference to the production of the detenu and the production of the seized materials before the learned Magistrate would have far reaching consequences in the matter of passing of the order of detention. In the said circumstances, the failure on the part of the detaining authority in not making proper reference to the relevant documents relating to the production of the detenu before the Magistrate and production of the seized materials would seriously impair the impugned order of detention, as that would irresistibly show the total non application of mind on the part of the detaining authority over the relevant documents, which were the basis for passing the impugned order of detention. That apart, the unexplained delay as between 01.07.2009 and 10.07.2009 would also have far reaching consequences in the matter of the disposal of the petitioner's representation.

6. Having regard to the above conclusions, we are convinced that the impugned order of detention cannot be sustained. The habeas corpus petition, therefore, stands allowed and the impugned order of detention is set aside. The detenu, viz., Koni Oosi @ Ayyakannu, son of Pallikondan, is directed to be set at liberty forthwith, unless he is required in connection with any other case or cause.