

(2003) 02 MAD CK 0115

In the Madras High Court

Case No : Habeas Corpus Petition No. 2024 of 2003

Chandra

APPELLANT

Vs

District Collector and District Magistrate and The Secretary to
Government, Prohibition and Excise Department

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 02 MAD CK 0115

Hon'ble Judges : P. Shanmugam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : A.E. Lakshmi Narayanan, for the Appellant; A. Navaneethakrishnan,
Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P. Shanmugam, J.—This HCP is filed by the wife of the detenu praying to set aside the order of detention dated 12.7.2002 passed u/s 3(1)

of the Tamil Nadu Act 14 of 1982, wherein he was branded as a bootlegger as contemplated u/s 2(b) of the said Act.

2. As per the grounds of detention, the detenu came to the adverse notice of the detaining authority in four adverse cases involving prohibition offences.

3. As per the ground case, it is seen that on 20.6.2002, the Inspector of Police with his raiding party found the detenu in possession of illicit arrack at Mettupatti, Karumalai Village, Manapparai Taluk. The Inspector of Police arrested the detenu and seized the illicit arrack and destroyed it after

taking the required sample. Thereafter, the detenu was produced before the Judicial Magistrate, Manapparai on 20.6.2002 who remanded him till

4.7.2002 and he was lodged in the Sub-Jail, Manaparai. The seized samples were sent to the Assistant Director of Forensic Science Laboratory, Tiruchirappalli for examination and report. The Medical Officer sent the chemical analysis report. The papers were placed before the detaining authority, who was subjectively satisfied that the detenu was habitually committing prohibition offences and was so acting in a manner prejudicial to the maintenance of Public Order and Public health under T.N. Act 14 of 1982 and that there is a necessity to pass an order of detention for the maintenance of public order and public health, as a result of which the impugned order of detention came to be passed. The said order is now under challenge.

4. We have heard the counsel for the petitioner and the learned Additional Public Prosecutor.

5. The detenu had moved a bail application before the District Judge, Tiruchirappalli in Crl. M.P. No. 4023 of 2002 and the said application came to be dismissed with the following order:-

Heard both sides. The petitioner is accused of offence under Sections 4(1-a) r/w 4(1-A) of the T.N.P. Act. The learned Public Prosecutor would submit that the petitioner has been booked under Goondas Act. Petition stands dismissed on 4.7.2002

6. While so, the detention order came to be passed on 12.7.2002. The English version of the detention order in para-5 says that the detenu is in remand and that there is imminent possibility that he may come out on bail, whereas the Tamil version of the same paragraph specifically states that the detenu has not filed any bail application so far. Apart from the fact that a new sentence giving an entirely different story has been introduced in the Tamil version, the detaining authority is not apprised of the dismissal of the bail application, on the basis that the detenu had been booked under the Goondas Act. Thus, we find that there is non-application of mind in referring to the application for bail and the order of bail passed in the grounds of detention and the positive assertion in the Tamil version that no such bail application has been filed. The submission of the learned Public Prosecutor before the Sessions Court was that the detenu has been booked under the Goondas Act. The submission of the learned counsel for the petitioner that there is some doubt as to the date on which the order had

been passed in the light of the submission made by the Public

Prosecutor before the Sessions Court has got some force.

7. Taking these factors into account, we are satisfied that the order of detention suffers from non-application of mind and is liable to be set aside.

Accordingly, it is set aside. The HCP is allowed and the detenu is directed to be released forthwith, unless his custody is required in connection

with any other case.