

(2007) 11 MAD CK 0262

In the Madras High Court

Case No : Habeas Corpus Petition No. 1218 of 2007

Chinnathambi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-11-2007

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1), 4(1A)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2007) 11 MAD CK 0262

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : S. Sugendran, for the Appellant; N.R. Elango, Assistant Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The second respondent herein clamped an order of detention as against the detenu Easwaran, brother of the petitioner,

as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained u/s 3(1) of the Tamil Nadu

Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas. Immoral Traffic Offenders, Sand Offenders, Slum

Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the brother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of

habeas corpus to call for the records relating to the detention order passed by the second respondent pertaining to the order made in C3. D.O.

No. 67/2007, dated 3.8.2007, to quash the same and to direct the respondents to produce the detenu, now confined at Central Prison, Vellore

before this Court and to set him at liberty.

3. The order of detention dated 3.8.2007 was passed on the basis of ground case in Crime No. 801 of 2007 for alleged commission of offences

punishable under Sections 4(1)(i), 4(1)(aaa) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act, based on the complaint of one Inayathullah, who

consumed liquor purchased from the detenu and felt burning sensation in eyes and stomach, vomited and fell down. After investigation, the detenu

was arrested and the contraband was seized. The samples were sent for chemical analysis and report reveals that the sample of arrack contained

6.5%mg of Atropine per 100 ml, and the same would endanger life.

4. Apart from the above, the detaining authority also took note of five adverse cases pending against the detenu, viz., Crime Nos. 766 and 1196 of

2006 and 299 of 2007 on the file of Tirupattur Taluk Police Station and Crime Nos. 268 and 311 of 2006 on the file of Kurusilapattu Police

Station, all for the offences of alike nature.

5. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public

health, passed the impugned order.

6. Heard both sides. We have perused the materials produced before us.

7. The main ground of attack in this case is that even though the detaining authority passed the detention order only on 3.8.2007, the sponsoring

authority, even before recommending for detention, had represented before, the Principal Sessions Judge, Vellore in CrI. M.P. No. 5614 of 2007

on 2.8.2007 itself, that the detenu is likely to be detained under Tamil Nadu Act 14 of 1982, which shows the predetermination of mind on the

part of the sponsoring authority.

8. The detention order was passed on 3.8.2007. But, the sponsoring authority, represented on 2.8.2007 before the learned Principal Sessions

Judge, Vellore in CrI. M.P. No. 5614 of 2007, a bail petition, that the detenu is likely to be detained under Tamil Nadu Act 14 of 1982. This, in

our considered opinion, would show the pre-determination of mind on the part of the sponsoring authority. The detaining authority, while passing

the order of detention, had failed to take notice of this pre-determined averment made by the sponsoring authority.

9. For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 3.8.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is, required in any other crime. No costs.