
(2007) 12 MAD CK 0083
In the Madras High Court
Case No : H.C.P. No. 1391 of 2007

K. Jeevarathinam

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

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

Citation : (2008) 1 LW(Cri) 158

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—Challenging the order of detention dated 6.9.2007 made in No.C2/39609/2007, passed by the second respondent

branding the friend of the petitioner, one Sankar alias Panai Sankar as a "Bootlegger" under the provisions 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), the petitioner, who is now confined in Central Prison, Cuddalore, has filed this

Habeas Corpus Petition to set aside the order of detention and directing the respondents to produce him before this Court and set him at liberty.

2. The order of detention dated 6.9.2007 was passed on the basis of ground case in Crime No. 1194 of 2007 for alleged commission of offences

punishable under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on

18.8.2007, when the Inspector of Police, Villupuram Prohibition Enforcement Wing along with his police party conducted prohibition raid they

found the detenu selling arrack. The detenu was arrested, the contraband was seized and the chemical analysis report states that the sample arrack

was mixed with 3.18 mg% w/v of atropine a poisonous substance, which would endanger life.

3. That apart, the detaining authority also took note of four adverse cases pending against the detenu in Crime Nos. 131, 699, 1124 and 1170 of

the 2007 for the offences punishable under Sections 4(1-A), 4(1)(aa), 4(1-A), 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act read with

Rules 5 and 6 of the TNRS Rules, and Sections 4(1) (aa) and 4(1-A) of the Tamil Nadu Prohibition Act.

4. Considering these activities of the detenu are prejudicial to maintenance of public health and public order, the detaining authority passed the

impugned order. The detenu was declared as a ""bootlegger"" and was kept in custody at Central Prison, Cuddalore.

5. The learned Counsel for the petitioner inviting our attention to paragraph (3) of the grounds of detention dated 6.9.2007, wherein it is stated that

the detenu was remanded till 31.8.2007 by the learned Judicial Magistrate No. 1, Villupuram and that his remand was extended up to 14.9.2007

on 31.8.2007, and the proceedings of the Judicial Magistrate No. 1, Villupuram dated 31.8.2007, wherein it is stated that the accused was not

produced and to be produced on 14.9.2007, contends that there is no valid remand on the date of passing of the detention order and therefore,

the order of detention is vitiated.

We have perused the entire materials placed before us and heard the submissions of both sides.

6. As pointed out by the learned Counsel for the petitioner, in paragraph (3) of the grounds of detention dated 6.9.2007, it is stated that the detenu

was remanded in the ground case by the order of the learned Judicial Magistrate No. 1, Villupuram till 31.8.2007 and thereafter the remand was

extended up to 14.9.2007, whereas, at Page 50 of the booklet, in the proceedings dated 31.8.2007 of the learned Judicial Magistrate No. 1,

Villupuram it is stated that the accused was not produced and to be produced on 14.9.2007. Thus, it is apparent on the face of the records that

there is no valid remand on the date of passing of the detention order. This aspect of the case was not properly considered by the detaining authority and the same vitiates the order of detention.

7. For the reasons aforesaid, the impugned order of detention suffers for non-application of mind and as such, the same is liable to be set aside and

accordingly, the same is set aside. This petition is allowed. The order of detention dated 6.9.2007 is set aside. The detenu is directed to be set at

liberty forthwith unless his presence is required connection with in any other crime. No costs.