

(1988) 12 MAD CK 0014
In the Madras High Court
Case No : Writ Petition No. 5451 of 1988

Kuppan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 20-12-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 12 MAD CK 0014

Hon'ble Judges : Janarthanam, J; David Annoussamy, J

Bench : Division Bench

Advocate : S. Govindarajan, for the Appellant; K. Doraiswami, Public Prosecutor, for the Respondent

Judgement

David Annoussamy, J.—This is a petition filed by the detenu under Art. 226 of the Constitution of India, for the issuance of writ of Habeas

Corpus quashing the order of detention and to set him at liberty.

2. The detention order dated 9-3-1988, was passed by the Collector and District Magistrate, Coimbatore, under Tamil Nadu Act 14 of 1982,

with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order as a Boot-legger.

3. The main ground urged by the learned counsel for the petitioner is that there was no compelling necessity to pass an order of detention against

the detenu who was already on remand. It is now well settled that, in respect of a person who is already on remand, the detaining authority should

be aware of the position and there must be a compelling reason justifying the detention order in such circumstances. In Suraj Pal Sahu Vs. State of

Maharashtra and Others, , it has been held that the prejudicial activities of the person detained should be continuous in character and should be of

such nature so as to fully justify the detention order. In the present case, the grounds of detention would disclose that the detaining authority was

aware that the petitioner was on remand and it is added -

However, I am satisfied that the activities, warrant his detention under the Tamil Nadu Act 14 of 1982".

4. The learned Public Prosecutor appearing on behalf of the State, would contend that the above sentence would disclose the compelling necessity.

In fact if the activities referred to earlier are in the ground sufficient to constitute the compelling necessity, this short sentence could be considered

as sufficient, since there is no sacrosanct formula to express compelling necessity. The activities referred to are close of the ground case as well as

if two previous cases recited in the grounds of detention. Obviously the ground case alone would not constitute a compelling necessity for remand,

because there will be no continuance of prejudicial activities as required by the decision of the Supreme Court, referred to above. There will be

compelling necessity only if the ground case is taken along with the previous cases. In this connection the learned counsel for the petitioner would

contend that in the two previous cases it is clearly stated that samples were sent for Chemical analysis and that the reports of the Chemical Analyst

have not been given to the petitioner. No doubt in the case of a person being on bail, when there is any compelling necessity when an order of

detention is passed, it would be enough to refer to the report of the Chemical Analyst in the ground case and it would not be necessary to give the

reports of the previous cases as well. But as stated earlier in this case, the compelling necessity is requested in this case and such compelling

necessity from the wording of the grounds of detention should arise out of his activities, that is to say inclusive of those on the previous cases. The

detenu when he makes his representation would have persuaded the detaining authority that there was no such compelling necessity. In that

purpose he would necessarily require all the documents relevant to the previous cases as well in order to put forth the representations in a proper

and convincing manner. In the present case, the reports of the Chemical Analyst have not been provided to the detenu. To sum up, there should be

a compelling necessity and that compelling necessity should be clearly expressed so as to afford the possibility to the detenu to make his

representation in respect of compelling necessity. In the present case, the fact of not supplying him the Chemical Analyst's reports in respect of previous case, without which there was compelling necessity, deprived him from making an effective representation and that fact vitiates the order of detention.

5. In the result, the petition is allowed. The order of detention is set aside. The detenu is directed to be set at liberty, if he is not otherwise required.

6. Petition allowed.