

(2010) 10 MAD CK 0162
In the Madras High Court
Case No : H.C.P. No. 962 of 2010

Kuppu

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

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

Citation : (2010) 10 MAD CK 0162

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : V.P. appaswamee, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition challenges an order of detention made by the second respondent dated 10.5.2010, whereby the petitioner's son-in-law Mahendiren, was ordered to be detained under Act 14/82 branding him as a Bootlegger.

2. The Court heard the learned Counsel for the petitioner and also looked into all the materials available and in particular the order under challenge.

3. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu was involved in four adverse cases namely (1) Cheyyar PEW PS Cr. No. 365/2010 u/s 4(1)(a) of TNP Act; (2) Cheyyar PEW Cr. No. 406/2010 u/s 4(1)(i) TNP Act; (3) Dusi PS Cr. No. 494/2009 u/s 4(1)(a) TNP Act and (4) Dusi PS Cr. No. 555/2009 u/s 4(1)(a) read with 4(1-A)(ii) TNP Act @ 4(1)(a) TNP Act, and also in a ground case registered by Cheyyar PEW in Cr. No. 410/2010 u/s 4(1)(i) read with 4(1-A)(ii) of TNP Act for an occurrence that took place on 16.4.2010, and he was arrested on the very day, the detaining authority on scrutiny of the materials available took the view that the activities of the detenu were prejudicial to the maintenance of the public order and hence

made the order under challenge.

4. The learned Counsel while advancing arguments on behalf of the petitioner, raised the following points which, according to him, would suffice to set aside the order:

(i) A representation was made on 14.5.2010, which was a post-detention one. But the same has not yet been considered.

(ii) When the bail application was filed before the Sessions Court, Thiruvannamalai, in Crl. M.P. No. 1775/2010, it is found in the grounds of detention as if it is to be called on 12.5.2010. The order of detention came to be passed on 10.5.2010, but there is no material to indicate that actually the application was posted to 12.5.2010. Thus the detaining authority was not actually apprised as to the stage of the bail application properly.

(iii) The detenu was arrested on 16.4.2010, and the contraband was also, according to him, seized on the very day. In the requisition given by the Investigating Officer to the Court for sending the contraband for analysis dated 16.4.2010, it is stated as if the samples were placed before the Court that day. On the contrary, Form 95 as found in page 16 of the booklet, would indicate that the contraband was received by the Court only on 19.4.2010, and this was a vital discrepancy as to when those contraband was actually placed before the Court. In such circumstances, the authority should have called for an explanation from the sponsoring authority as to the discrepancy, but failed to do so. Hence the order has got to be set aside.

5. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

6. As could be seen above, the detaining authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order, has made the order under challenge. Insofar as the first ground, according to the learned Counsel for the petitioner, a representation was made on 14.5.2010 and it was not considered. According to the learned Additional Public Prosecutor, the said representation was sent to the Government on 25.5.2010, and it was also disposed of on 7.6.2010. Hence, this Court is of the view that the first ground cannot be accepted.

7. As regards the second ground, it is an admitted position that the bail application was actually filed in Crl. M.P. No. 1775/2010 on the file of the Sessions Division, Thiruvannamalai. The pendency of the said application is also not in dispute. The authority has also stated that the matter has been posted to 12.5.2010. It is pertinent to point out that the authority has stated that it was well within the knowledge of the authority that the application was pending. Under the circumstances, the particular date when the matter is posted namely 12.5.2010, is mentioned. At this juncture, this, in the considered opinion of this Court, is not a ground at all which would make the order of detention infirm.

8. Insofar as the third ground, it is an admitted position that the detenu was arrested on 16.4.2010, and the contraband was seized from him. The requisition which was forwarded by the Investigating Officer to the Judicial Magistrate concerned for sending the samples for analysis made on 16.4.2010, would read as if the samples were placed before the Court on 16.4.2010. But contrarily, Form 95 as found in page No. 16, would indicate that the samples were received by the Court only on 19.4.2010. Hence it would be quite clear that when the requisition was made on 16.4.2010, the samples were not actually placed before the Court, but they were placed only on 19.4.2010. When such a discrepancy was found, a duty was cast upon the detaining authority to call for an explanation from the sponsoring authority, but failed to do so. On this sole ground, this Court is of the view that the order has got to be set aside.

9. Accordingly, this habeas corpus petition is allowed setting aside the order of detention passed by the second respondent. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.