

(1988) 04 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 9279 of 1987

Murugan

APPELLANT

Vs

State by Commissioner and Secretary to Govt. Prohibition
and Excise XII Dept. Fort. St. George and The District
Magistrate and Collector, Chengalpatta at Kanchipuram

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (1988) 04 MAD CK 0039

Hon'ble Judges : S.A. Kader, J;K.M. Natarajan, J

Bench : Division Bench

**Advocate : Swamidass Manokaran, for the Appellant; N. Dinakar, Government
Advocate, for the Respondent**

Final Decision : Allowed

Judgement

S.A. Kader, J.—This writ of habeas corpus has been filed by the Petitioner under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus quashing the order of detention passed against him by the second Respondent-Commissioner of Police Madras City on 8-6-1987 u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers-Drug-offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act(XIV) of 1982 with a view to preventing the Petitioner from acting in any manner prejudicial to the maintenance of public order.

2. The main ground of attack levelled by Mr. Swamidoss Manokaran, learned Counsel appearing for the Petitioner is that the Petitioner was on bail on the date Of passing of the order of detention on 8-6-1987 and the footnote in the order of detention and in the grounds of detention for service on the detenu through the Superintendent, Central Prison Madras is not correct and has been mechanically made without proper application of the mind of the detaining authority and the

order of detention is vitiated thereby. In reply thereto the second Respondent has come forward with this explanation in Para 6 of the counter affidavit.

With reference to the ground(d) of paragraph 2 of the affidavit, it is submitted that in the ground case the detenu was arrested on 29-4-1987 at the spot where he was found selling illicitly distilled arrack and he was remanded by the Sub-Divisional Judicial Magistrate Ponneri on the same day and he was later released on bail. The order of detention was passed subsequently on 8-6-1987 and hence the warrant of arrest was issued along with the detention order. The detenu was arrested by the Inspector of Police Prohibition Enforcement Wing, Redhills on 9-6-1987 to execute the warrant issued in the detention case and he was produced before the superintendent, Central Prison Madras. Hence the fact that the detention order to be served through the Superintendent Central Prison Madras is not wrong

3. We have perused the file produced by the learned Public Prosecutor, the order of detention both in English and in Tamil and the grounds of detention in both the languages bar the foot-note giving the address of the detenu and service through the Superintendent, Central Prison, Madras-3. In the detention orders there is also the endorsement for service of the order on the detenu. There is absolutely nothing to show that these orders or the grounds of detention were served through the Superintendent, Central Prison, We are convinced that these orders and the grounds have been served upon the detenu outside the prison. The Foot-note in the orders for service On the detenu through the Superintendent, Central Prison has been incorporated at a time when the detenu was actually on bail, which leaves no room for doubt that the order of detention has been mechanically signed. A Bench of this Court in *Manjula v. State of Tamil Nadu*, 1987 L.W. (Cri.) 512, has under similar circumstances come to the conclusion that the foot-note" (sic) should have been typed and cyclostyled on 16-3-1987 probably simultaneously with the detention order and the learned Judge had no other go except to hold that the detaining authority was not quite sure as to whether the detenu was inside the prison or not and that he has mechanically signed the same. The order of detention was, therefore, set aside. We respectfully agree with the said view.

4. For the foregoing reasons, the order of detention passed against the Petitioner has to be set aside.

5. In the result, the petition is allowed, the order of detention is quashed and the detenu is directed to be set at liberty forthwith unless required in any other case.