

(2007) 03 MAD CK 0186
In the Madras High Court
Case No : H.C.P. (MD) No. 59 of 2007

Muthu

APPELLANT

Vs

The District Magistrate and District Collector and The
Secretary to Government, Government of Tamil Nadu,
Prohibition and Excise IX

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 8

Citation : (2007) 03 MAD CK 0186

Hon'ble Judges : P.R. Shivakumar, J;M. Chockalingam, J

Bench : Division Bench

Advocate : C. Muthu Saravanan, for the Appellant; Daniel Manoharan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. Challenging an order of detention passed by the first respondent on 24.11.2006, the wife of the detenu Pitchai, has brought forth this petition.
2. The order under challenge is perused. The affidavit in support of the petition and the counter affidavit are perused. The Court heard the learned Counsel for the petitioner.
3. As could be seen from the available materials, the sponsoring authority made a recommendation stating that there is one ground case registered by Sivakasi Town Police Station in Crime No. 1214 of 2006 u/s 8(c) read with 20(b)(ii)(B) of NDPS Act, for an occurrence that took place on 16.11.2006 where the detenu was found in possession of 120 grams of ganja, and there are five adverse cases, the first one registered by the same Police Station in Crime No. 285/2001 u/s 8(c) read with 20(b)(ii)(A) of NDPS Act for an occurrence that took place on 8.4.2001 where he was found in possession of 50 grams of ganja and was found guilty, the second one registered by the same Police Station in Crime No. 101/2003 u/s 8(c) read with 20(b)(ii)(A) of NDPS Act for an occurrence that took

place on 10.2.2003 where he was found in possession of 50 grams of ganja and was found guilty, the third one registered by the same Police Station in Crime No. 303/2003 u/s 8(c) read with 20(b)(ii)(A) of NDPS Act for an occurrence that took place on 1.4.2003 where he was found in possession of 500 grams of ganja, the fourth one registered by the same Police Station in Crime No. 879/2003 u/s 8(c) read with 20(b)(ii)(A) of NDPS Act for an occurrence that took place on 30.9.2003 where he was found in possession of 250 grams of ganja and the fifth one registered by the same Police Station in Crime No. 826/2006 u/s 8(c) read with 20(b)(ii)(B) of NDPS Act for an occurrence that took place on 22.8.2006 where he was found in possession of 1010 grams of ganja. Pointing out all these particulars and materials regarding the same, there was a recommendation made by the sponsoring authority to the first respondent for passing an order of detention. The first respondent after perusal and scrutiny of the materials, found that the activities of the petitioner are prejudicial to the public health, and under the circumstances, he arrived at the subjective satisfaction, and the detenu should be termed as drug offender. Accordingly, the first respondent has passed the order of detention, which is the subject matter of challenge before this Court.

4. Advancing his arguments in his sincere attempt of assailing the order, the learned Counsel would submit that in the instant case, first of all, there is a delay of 3 days; that the remarks were called for on 6.2.2007; that the same was received on 15.2.2007, and the file was submitted on 19.2.2007; that there was a delay of 3 days which remained unexplained; that in the ground case, the detenu was remanded on 16.11.2006; that as could be seen from the impugned order, the copy of the remand order was not served upon the detenu; that since it was not served upon him, he could not make effective representation; that so long as he could not make effective representation, the order could not be said to be one made after arriving at the subjective satisfaction, and under the circumstances, it has got to be set aside.

5. The learned Counsel would further add that in the instant case, as could be seen from the available materials, an information was received on 30.9.2003 relating to Crime No. 879 of 2003; but, the date of the F.I.R. is shown as 30.3.2003, and thus, there was a discrepancy in the major particulars as to the date of occurrence and also the registration of the case; that if such a situation arose, a duty was cast upon the detaining authority to call for a clarification in that regard, but not done so; that it can be taken as non-application of mind, and under the circumstances, it has got to be quashed.

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

7. After doing so, this Court is of the considered opinion that the order of detention has got to be quashed. In the instant case, this Court is unable to notice any delay as put forth by the learned Counsel for the petitioner. So far as the other two grounds are concerned, this Court has to necessarily agree with the learned Counsel for the petitioner. There was a remand order passed on

16.11.2006. As rightly pointed out by the learned Counsel for the petitioner, no remand order copy was served upon the detenu. No reply comes from the State in this regard. In such circumstances, as rightly pointed out by the learned Counsel, no effective representation could have been made. Hence, this Court is of the opinion that it is a fit ground to quash the order.

8. As regards the last contention, a perusal of the F.I.R. in Crime No. 879/2003 would indicate that the actual date of occurrence and the date of information are found to be 30.9.2003; but, the date of the F.I.R. is found as 30.3.2003. Thus, there is a discrepancy in the material particulars. If to be so, the detaining authority before passing an order, should have called for a clarification from the sponsoring authority, but failed to do so. Hence, it would be quite clear that there could not have been either any application of mind in the correct sense of the term or arrival of subjective satisfaction. In such circumstances, the order of detention has got to be quashed.

9. In the result, this habeas corpus petition is allowed quashing the order of the first respondent. The detenu is directed to be set at liberty forthwith unless his presence is required in any other case.