

(2010) 08 MAD CK 0042
In the Madras High Court
Case No : H.C.P. No. 669 of 2010

Palani	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Tamil Nadu Prohibition Act, 1937 — Section 4(1), 4(1A)

Citation : (2010) 08 MAD CK 0042

Hon'ble Judges : M. Sathyanarayanan, J; M. Chockalingam, J

Bench : Division Bench

Advocate : O.S. Thilak Pasumbadiar, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—The petitioner is the brother of the detenu Ganesan. He challenges an order of the second respondent in No.

C3/D.O. No. 24/2010 dated 8.4.2010, whereby his brother was ordered to be detained under Act 14/82 branding him as a Bootlegger.

2. The affidavit in support of the petition and the grounds of detention are looked into. The Court heard the learned Counsel on either side.

3. Pursuant to the recommendations made by the sponsoring authority that the detenu is involved in five adverse cases namely (1) Omarabad PS

Cr. No. 390/2008 u/s 4(1)(aa) TNP Act; (2) Omarabad PS Cr. No. 417/2009 under Sections 4(1)(aaa) and 4(1-A) ii TNP Act; (3) Omarabad

PS Cr. No. 551/2009 u/s 4(1)(aa) TNP Act; (4) Omarabad PS Cr. No. 613/2009 u/s 4(1)(aaa) TNP Act and (5) Omarabad PS Cr. No.

62/2010 u/s 4(1)(i) TNP Act and also in one ground case registered by Omarabad PS in Crime No. 139/2010 under Sections 4(1)(i), 4(1)aaa

and 4(1-A)(ii) TNP Act for an occurrence that took place on 9.3.2010, and he was arrested on the very day and remanded, the detaining

authority after scrutiny of the materials placed, formed an opinion that the detenu should be detained under Act 14/82 and hence passed the order

which is under challenge.

4. According to the learned Counsel for the petitioner, a medical certificate was obtained by the Investigating Officer in the ground case and also

placed before the detaining authority since it is one of the materials relied upon. He would further submit that a perusal of the same as found in page

42 of the booklet, would indicate that it did not contain the name of the accused, crime number, police station, etc., and thus it is bereft of any

particulars, and when the relevant particulars which are pertaining to pass an order, are actually absent, a clarification should have been called for,

but not done so, and under the circumstances it would affect the order.

5. The learned Counsel would submit as the other ground that a bail application was filed before the Sessions Division, Vellore, in CrI.M.P. No.

1385/2010 in the ground case and the same was dismissed on 24.3.2010; that subsequently, the order came to be passed on 8.4.2010; that on

the very day, when the order came to be passed, there was no bail application pending before any Court of criminal law, but it has been stated by

the authority in the order that there was a real possibility of his coming out on bail, and it was without any material, much less cogent material.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. As could be seen from the available materials, the detaining authority has made the order of detention terming the detenu as a Goonda, on the

strength of the materials placed before him, pertaining to five adverse cases and one ground case as referred to above, and has recorded the

subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order. As regards the first ground raised, it is

pertinent to point out that the medical certificate obtained by the Investigator and placed before the detaining authority, as found in page 42 of the

booklet, was one of the relied on documents. But a perusal of the same would indicate that it did not contain the relevant particulars namely crime

number, name of the accused, etc. In such circumstances, a clarification should

have been called for, but not done so. Hence the order becomes defective.

8. As regards the second ground urged, it is an admitted position that he has moved a bail application in the ground case in CrI.M.P. No.

1385/2010 and the same was dismissed by the Sessions Division, Vellore, on 24.3.2010. It remains to be stated that the order of detention came

to be passed on 8.4.2010. Thus, it is quite evident that on the date when the order came to be passed, there was no bail application pending

before any Court of criminal law. But the authority has observed that there was a real possibility of his coming out on bail. It is only an expression

of the impression in the mind of the authority or an inference that was made and that too without any basis or material, much less cogent material as

the law would require. A Division Bench of this Court has held in a case reported in 2008 (1) MWN (CR.) 158 S. Venugopal v. The

Commissioner of Police and Anr. as follows:

9. Keeping in view the ratio of the aforesaid decisions and more particularly the opinion expressed by the Full Bench as well as the decision of the

Supreme Court in 2006 (1) SCC (CRI) 593 (cited supra) notwithstanding the seriousness of the allegations against the detenu, particularly relating

to the ground case, we are constrained to come to the conclusion that the observation of the Detaining Authority ""that there is a real possibility of

his coming out on bail by filing another Application before the same Court or Higher Courts since in similar cases bails are granted by the same

Court or Higher Court"" is mere ipse dixit of the Detaining Authority without any cogent material. The offences allegedly committed by the detenu

and the background in which such offences were allegedly committed clearly indicate that the offences are not of a routine nature wherein one can

assume that bail would be granted almost as a matter of course either by the Sessions Judge or by the High Court.

Under the circumstances, on the above two grounds this Court is of the view that the order of detention has got to be set aside.

9. In the result, this habeas corpus petition is allowed setting aside the order of the second respondent, and the detenu is directed to be set at

liberty forthwith unless his presence is required in connection with any other case.