

(2016) 01 MAD CK 0136
In the Madras High Court
Case No : H.C.P. (MD) No. 1466 of 2015

Pathinettampadiyan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

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

Citation : (2016) 01 MAD CK 0136

Hon'ble Judges : P.R. Shivakumar and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : K.A.S. Prabhu, for the Appellant; A. Ramar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—1. The petitioner is the detenu. He has been detained by the second respondent by his Detention Order in C.O.C. No. 65 of 2015, dated 06.10.2015, holding him to be a "Boot-Legger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No. 298 of 2015 registered on the file of Velippalayam Police Station for an offence punishable under Section 4(1)(aaa) r/w 4(1-A) TNP Act 1937 (Transport) and following four adverse cases:-

"(i). Crime No. 205 of 2015 registered on the file of Nagapattinam PEW for an offence punishable under Sections 4(1)(aa) TNP Act 1937;

(ii) Crime No. 507 of 2015 registered on the file of Nagapattinam PEW for an offence punishable under Section 4(1)(aa) r/w 4(1-A) TNP Act 1937 (Transport);

(iii) Crime No. 572 of 2015 registered on the file of Nagapattinam PEW for an offence punishable under Section 4(1)(aaa) r/w 4(1-A) TNP Act 1937; and

(iv) Crime No. 243 of 2015 registered on the file of Nagapattinam Town Police Station for an offence punishable under Section 4(1)(aaa) TNP Act 1937

(Transport)."

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of BootLegger and that his presence at large would be prejudicial to the maintenance of public order and public health and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. Though a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contentions:-

"(i). There is non-application of mind on the part of the Detaining Authority insofar as the Detaining Authority, while expressing the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case, made an observation that there was a real and imminent possibility of the detenu coming out on bail by filing a bail petition before the High Court, whereas the earlier part of the observation shows that as on the date of the order of detention, the bail petition filed in Cr.M.P. No. 2531 of 2015, on the file of the learned Sessions Judge, Nagapattinam was pending.

ii. Though the Detaining Authority expressed the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case, there was failure on the part of the Detaining Authority to express the subjective satisfaction regarding the possibility of the detenu coming out on bail in the fourth adverse case, in which he was produced before the learned Judicial Magistrate No. II, Nagapattinam and remanded to judicial custody, as noted in the tabular column."

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. Insofar as the first contention is concerned, in Paragraph No. 5 of the grounds of detention, the Detaining Authority referred to the pendency of the bail petition filed before the learned Sessions Judge, Nagapattinam in the ground case. However, the Detaining Authority proceeded further to state that there was real and imminent possibility of the detenu coming out on bail in the ground case by filing a bail petition for the above case before the High Court, as if no bail petition was pending.

6. For better appreciation, the relevant part of Paragraph No. 5 of the detention order is re-produced hereunder:-

"5. I am aware that Thiru. Pathinettampadiyan, Male, aged 36/2015, S/o. Azhaguthevar was produced before the learned Judicial Magistrate No. II, Nagapattinam, on 19.09.2015 and remanded in District Jail, Nagapattinam, as a remand prisoner on the same day itself. His remand period was expired on

01.10.2015 and further his remand period was extended upto 15.10.2015. I am aware that Thiru. Pathinettampadiyan, Male, aged 36/2015, S/o. Azhaguthevar is in remand in connection with the case in Velippalyam Police Station in Crime No. 298 of 2015. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court No. II, Nagapattinam, in Cr.M.P. No. 3056 of 2015 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No. II, Nagapattinam, on 23.09.2015. Further bail petition filed before the Sessions Judge, Nagapattinam, was pending in Cr.M.P. No. 2531 of 2015, dated 29.09.2015. Further, in his own second adverse case in Nagapattinam P.E.W. Cr.No. 507 of 2015, u/s. 4(1)(aa) r/w 4(1-A) TNP Act 1937 (Transport), Thiru. Pathinettampadiyan, Male, aged 36/2015, S/o. Azhaguthevar was arrested and remanded on 15.07.2015 and later released on bail by the District Sessions Court, Nagapattinam, in Cr.M.P. No. 1917/2015, dated 04.08.2015. Hence, I am satisfied that there is a real and imminent possibility of [Thiru. Pathinettampadiyan, Male aged 36/2015, S/o. Azhaguthevar] coming out on bail by filing a bail application for the above case before the High Court".

7. A perusal of the same will show that the learned counsel for the petitioner is right in contending that there was non-application of mind on the part of the Detaining Authority and the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case is not based on cogent reasons and is only an ipse dixit. On that ground, the order of detention is liable to be set aside.

8. Insofar as the second contention is concerned, in Paragraph No. I in the tabular column, against the fourth adverse case, namely, Crime No. 243 of 2015 on the file of Nagapattinam Town Police Station, registered for the offence punishable under Section 4(1)(aaa) TNP Act 1937 (Transport), it has been noted that he was remanded in the said case up to 12.10.2015 and the case was under investigation. However, the detaining authority expressed subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case alone and omitted to consider such real possibility of his coming out on bail in the fourth adverse case in which he had been remanded on 23.09.2015. The omission to consider the real possibility of the detenu coming out on bail in the fourth adverse case, in which also he was on remand, vitiates the proceedings. Hence, on both the grounds, the order of detention is liable to be set aside.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 06.10.2015, made in C.O.C. No. 65/2015, by the second respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate, Nagapattinam District, Nagapattinam and directs the release of the detenu by name, Pathinettampadiyan, S/o. Azhaguthevar, aged about 36 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.