

(2013) 07 MAD CK 0207
In the Madras High Court
Case No : H.C.P. No. 550 of 2013

R. Malar

APPELLANT

Vs

The State of Tamil Nadu and The District Magistrate and The
District Collector

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

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

Citation : (2013) MLJ(Cri) 412

Hon'ble Judges : V. Dhanapalan, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : K.S. Karthik Raja, for the Appellant; M. Maharaja, Additional Public
Prosecutor for Resp. 1 and 2, for the Respondent

Judgement

V. Dhanapalan, J.—Though the learned counsel for the petitioner raised several grounds to assail the order of detention, he would focus his

arguments mainly on one ground namely, in paragraph 4 of the detention order, the detaining authority has taken a view that bail is granted in such

similar cases by the concerned Court and such view is not supported by any material information such as Crime No., Case No., the offence for

which bail is being granted by the Courts, etc. and on this ground, the detention order is liable to be quashed. In support of his submission, learned

counsel for the petitioner relied on the decision of the Supreme Court reported in Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, . We

have heard the learned Additional Public Prosecutor on this point. We have considered the submissions made by the learned counsel on either

side, perused the material documents and the detention order in question and verified the records.

2. The detenu in this case has been branded as ""Bootlegger"". There are four adverse cases which are as follows:

Sl. No. Police Station, Crime No. & Dt. Section of Law
of Regn.

1. Attur P.E.W.- Cr. No. 228 of 4(1)(a), (4-A) of T.N.P. Act.

2012-11.05.2012

2. Attur P.E.W.- Cr. No. 427 of 4(1)(a), 4(1-A) of T.N.P. Act.

2012 19.08.2012

3. Attur P.E.W.- Cr. No. 593 of 4(1)(a) r/w 4(1-A) of T.N.P.

2012-07.12.2012 Act.

4. Attur P.E.W.- Cr. No. 24 of 4 (1)(aa), 4(1-A) of T.N.P. Act.

2013-17.01.2013

The ground case came to be registered on 27.01.2013 in Crime No: 34 of 2013 for offences u/s 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition

Act by Attur Prohibition Enforcement Wing Police Station.

3. The relevant portion of the detention order which shows the non application of mind on the part of the detaining authority is paragraph 4, which reads as follows:

4. I am aware that bail were granted to Thiru Umamaheswaran for the previous cases of Attur P.E.W. Crime Number 228/2012, u/s. 4(1)(a),

4(1-A) TNP Act and Attur P.E.W. Crime Number 427/2012, u/s. 4(1)(a), 4(1-A) TNP Act. I am also aware that, Thiru. Umamaheswaran was

remanded in the cases of Attur P.E.W. Crime Number 593/2012, u.s. 4(1)(aa), 4(1-A) TNP Act and Attur P.E.W. Crime Number 24/2013, u/s..

4(1)(aa), 4(1-A) TNP Act. I am also aware that the bail petition filed for Attur P.E.W. Crime No. 34/2013, u/s.. 4(1)(aaa), 4(1-A) Tamil Nadu

Prohibition Act case was granted by the Principal Sessions Judge, Salem, vide C.M.P. No: 595/2013, dated 20.2.2013. However, it is learnt that

the relatives of Thiru. Umamaheswaran are continuing of taking efforts to move bail applications to take him on bail. Also, bail is granted for such

similar cases by the concerned Court or the higher Court after efflux of some time. If he comes out on bail for the case, he will indulge in further

activities which will be prejudicial to the maintenance of public order.

4. Undoubtedly, the detaining authority is empowered to take a decision considering the similar cases of this nature. While doing so, it is incumbent on the part of the detaining authority to consider every aspect of the matter viz. in which similar case bail was granted, crime number, what was the order passed by the Court, what are all the materials made available in that case, etc. and there after it can proceed to pass an order regarding the real possibility of the detenu coming out on bail. This view was endorsed by the Supreme Court in the case of Rekha Vs. State of T. Nadu tr. Sec.

to Govt. and Another, Paragraph 3 of the said decision reads as under:

3. A perusal of the above statement in para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was granted by the concerned Court. Neither the date of the alleged bail orders has been mentioned therein, nor the Bail Application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that ""in similar cases bails were granted by the Courts"". In our opinion, in the absence of details this statement is mere ipsi dixit, and cannot be relied upon.

In our opinion, this itself is sufficient to vitiate the detention order.

In the light of the above stated position, as the impugned detention order is one passed with total non application of mind, without referring to the crime number, case number, etc., the same is vitiated. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely Umamaheswaran, S/o. Rajendran, made in C.M.P. No. 2/B.L.A./C2/2013 dated 25.02.2013, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.