
(2005) 09 MAD CK 0068

In the Madras High Court

Case No : Habeas Corpus Petition No. 746 of 2005

Rathinammal

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

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

Citation : (2005) CriLJ 4771 : (2005) 5 CTC 186

Hon'ble Judges : S.K. Krishnan, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : V. Jeevagiridharan, for the Appellant; V.M.R. Rajendran Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The petitioner, wife of the detenu, who has been detained under Act 14 of 1982 in the Central Prison, Coimbatore,

seeks a writ of habeas corpus to call for the records pertaining to the order of detention dated 23.6.2005 on the file of the second respondent

herein made in Cr.M.P.No.11/2005/C1, to quash the same and consequently to direct the respondents herein to produce the detenu before this

Court and set him at liberty.

2. According to the prosecution, on 30.5.2005, while the Inspector of Police, PEW, Gobichettipalayam was conducting prohibition raid at the

western side of Rayarpalayam bus stop within Varapalayam police station limit, the detenu Easwaran was found distilling arrack covered by thorny

trees. On apprehension of the detenu, police seized the illicit arrack, fermented wash, Kannuchatti, mud moda, rubber tube, Alumini Vadaisatti,

Mudsatti, a white plastic container under a mahazar. A case in crime No.371 of

2005 u/s 4(1)(b), 4(1)(g), 4(1)(aa) read with 4(1-A) of TNP Act, 1937 was registered against the detenu.

3. Taking into consideration the above case as ground case and seven adverse cases of akin nature, the detaining authority had passed the order of detention on 23.6.2005 terming the detenu as Bootlegger, u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982.

4. The learned counsel for the petitioner inviting our attention to the observation of the detaining authority in the grounds of detention, wherein he had stated that the detenu had not filed any bail application, however, there is an imminent possibility of the detenu coming out on bail, rightly contends that since the detenu, admittedly, had not preferred any bail application, question of imminent possibility of coming out on bail does not arise and hence, the impugned order of detention suffers from non application of mind.

5. Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail, the State could oppose the grant of bail. He cannot, however, be interdicted from moving the Court for bail by clamping an order of detention. The possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough.

There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order, vide *Shashi Aggarwal Vs. State of U.P. and Others*, .

6. ""Imminent possibility"" is relevant to the present circumstances and not relating to the future. The detaining authority has passed the impugned order of detention stating that there is an imminent possibility of coming out on bail, without any basis for such a possibility to occur in future, particularly, when the detenu has not resorted to file any bail application, which would reflect the non application of mind of the detaining authority to the actual situation of the case.

7. Similar view was also taken by a Division Bench of this Court, to which one of

us (PDDJ) was a party, in the order dated 23.12.2003 made in
HCP No.1611 of 2003.

8. For all these reasons, the impugned order of detention vitiates for non application of mind and accordingly, the same is quashed. The habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.