
(2004) 07 MAD CK 0021

In the Madras High Court

Case No : Habeas Corpus Petition No. 443 of 2004

S. Anbukarasi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

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

Citation : (2004) 07 MAD CK 0021

Hon'ble Judges : V. Kanagaraj, J;S. Ashok Kumar, J

Bench : Division Bench

Advocate : None, for the Appellant; Abudu Kumar Rajarathinam, Government Advocate (Crl. side), for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The wife of the detenu is the petitioner herein. She has come forward to file the above petition praying to issue a Writ of

Habeas Corpus, calling for the records relating to the order in C4/13510/2004 dated 25.2.2004 passed by the first respondent herein, quash the

same as illegal and further direct the respondents to produce the detenu, viz., Sundaram S/o Ayyakannu, who is now confined in the Central

Prison, Cuddalore, before this Court and set him at liberty forthwith.

2. The detenu has been detained on the ground that she was a Bootlegger under the relevant provisions of Tamil Nadu Act 14 of 1982.

3. Heard Mr. Abudu Kumar Rajarathinam, learned government advocate on the criminal side with no representation made on the part of the petitioner.

4. Learned Government Advocate on the criminal side reports that there are 5 adverse cases registered against the detenu of which one is u/s 4(1-

A) & 4(1)(Ada), of the T.N.P. Act, 1937.

5. On perusal of the records, this Court is able to come across a serious anomaly viz., non-application of mind on the part of the detaining authority.

6. So far as the non-application of mind on the part of the detaining authority is concerned, in para. 6 of the grounds of detention, it is stated by the

detaining authority that there is an imminent possibility of the detenu coming out on bail by filing bail applications in the Court, which statement

shows that there is non-application of mind on the part of the detaining authority because when the detenu has not filed any bail application, the

question of imminent possibility of his coming out on bail does not arise at all. Therefore, there is no material on record to show that the detaining

authority has independently applied his mind without taking into consideration the statement of the sponsoring authority, and hence, on both these

grounds, the order of detention gets vitiated.

7. This Court's attention is also drawn to a decision of the Apex Court rendered in *Rivadeneyta Ricardo Agustin v. Govt. of Delhi* reported in

1994 SCC (Cri) 354, wherein it is held:

7.

8. The above statement merely speaks of a "possibility" of the detenu's release in case he moves a bail petition. It neither says that such release

was likely or that it was imminent. Evidently, the statement falls short of the requirement enunciated by this Court in *Kamarunnissa*.

11. In these circumstances, we must hold that the principle enunciated by this Court in *Kamarunnissa v. Union of India* squarely applies and the

order is liable to be quashed. It is accordingly quashed.

Falling in line with the above decision of the Apex Court, since the present case is on similar set of facts and circumstances, this Court has to pass

its order in the following manner :-

In result,

(i) the above Habeas Corpus Petition is allowed;

(ii) the detention order dated 25.2.2004 made in C4/13510/2004 by the second respondent herein is quashed;

(iii) the detenu, viz., Thiru. Sundaram S/o Ayyakannu, is directed to be set at

liberty forthwith unless his detention is required in any other case.