

(2004) 07 MAD CK 0058

In the Madras High Court

Case No : Habeas Corpus Petition No. 441 of 2004

Saminathan

APPELLANT

Vs

The District Magistrate and District Collector and Secretary to
Government, Prohibition and Excise Department

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1), 4(1A)
Penal Code, 1860 (IPC) — Section 328

Citation : (2004) 07 MAD CK 0058

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 husband of the detenue is the petitioner herein. He 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 C3. Do. No. 14/2004 dated 28.2.2004 passed by the first respondent herein, quash the same as illegal and further direct the respondents to produce the detenue, viz., Arputham W/o Saminathan, who is now confined in the Special Prison for Women, Vellore, before this Court and set him at liberty forthwith.

2. The detenue 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 six adverse cases registered against the detenue of which one is u/s 4(1)(i), 4(1-A) (ii) of the T.N.P. Act, 1937 r/w Section 328 I.P.C.

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.5 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 for the offence u/s 4(1)(i), 4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 r/w Section 328 I.P.C., 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 therein:

"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 28.2.2004 made in C3.D.O. No. 14 of 2003 by the first respondent herein is quashed;

(iii) the detenu, viz., Tmt. Arputham W/o Saminathan, is directed to be set at liberty forthwith unless her detention is required in any other case.