

(1992) 04 MAD CK 0033
In the Madras High Court
Case No : Writ Petition No. 26 of 1992

Srinivasan

APPELLANT

Vs

State of Tamil Nadu, and others

RESPONDENT

Date of Decision : 27-04-1992

Acts Referred:

Constitution of India, 1950 — Article 22, 226

Citation : (1992) CriLJ 3439

Hon'ble Judges : S. Marimuthu, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : Mr. V. Karthic, for the Appellant; Mr. G.M. Syed Fasiuddin, Assistant Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—This writ petition is filed by the detenu himself under Art. 226 of the Constitution of India seeking for the issue of a writ

of habeas corpus for quashing the order of detention dated 30-10-1991 and for setting him at liberty.

2. The detenu came to the adverse notice as a bootlegger in view of the cases referred to in the preamble and he was detained on the basis of the

ground case.

3. The impugned order of detention was passed by the District Magistrate and District Collector of North Arcot Ambedkar District, Vellore, the

second respondent herein, in exercise of the powers conferred by S. 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers,

Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), with a view

to preventing the detenu from acting in any manner prejudicial to the maintenance of Public order.

4. Though the learned counsel for the petitioner challenges the order of detention on various grounds, confined his arguments to ground (1) wherein it is stated as follows;

I state that the doctor's opinion alleged to have been obtained on 21-10-91 has not been furnished to me. Further opinion of the doctor as

alleged in page 8 of the detention order does not form part of any record supplied to me and despite my having requested to furnish the same, the

same has not been complied with and hence I was denied the opportunity of an effective representation.

4A In support of his contention he drew our attention to the averments at page 9 (page 7 of the order of detention) which reads as follows :

During the Course of investigation, the Inspector of Police, examined the medical officer Dr. Prakasam on 21-10-1991. The doctor has stated

that the consumption of arrack mixed with 3 to 5 grams of Chloral Hydrate, if consumed even in small doses may even cause death. Further doctor

has stated that mixture of arrack chloral hydrate, if consumed by a person it may affect the heart blood vessel, liver, kidney and other vital organs.

Further the doctor has also stated that the signs and symptoms alleged to have been ""experienced by Annamalai and Sundaram on 13-10-91 and

14-10-91 after consuming the arrack sold by Soenan may be due to poisoning due to chloral hydrate."".

He would submit that the document viz., doctor's opinion, was very much relied on by the detaining authority for arriving at subjective satisfaction,

but, the non-furnishing of copy of the vital document would vitiate the order of detention.

5. In this case, though the writ petition was admitted on 6-1-1992, time was granted from 17-2-1992 to 16-3-1992 and from 16-3-1992 to 30-

2-1992 and from 30-3-1992 to 14-4-1992. As 14-4-1992 was a holiday the case taken up on 20-4-1992 and again it was adjourned from 20-

4-1992 to this day viz. 27-4-1992 no counter has been filed. Even otherwise we gave opportunity to the learned Additional Public Prosecutor to

find out whether the copy of the vital documents, was furnished. The learned Additional Public Prosecutor after perusing the file fairly admitted that

such a statement has not been produced. The above statement is a material document and the same was relied on while arriving at the subjective

satisfaction by the detaining authority which is also not in dispute. In view of the fact that a copy of the material document was not furnished by the

detaining authority to the detenu so as to make effective representation. That alone in our view would vitiate the order of detention. To this effect

our attention was drawn to the decisions of the Court in Subbash Babu v. State Dy Secretary for Home etc., 1991 MLW 527 wherein it is

observed as follows :

The petitioner contended that the documents given to him along with the grounds of detention did not substantiate the same, that he was not given

the affidavit of the Forest Manager, which runs to two pages and it also does not mention about this allegation, that it was not known how the

second respondent arrived at the subjective satisfaction without any document, and hence the order was bad and that the extraneous consideration

about the failure of ecological system and the drastic reduction of bat population violated Article 22(5) of the Constitution, ""as no documents were

furnished to the detenu to make effective representation"".

The ratio of the above decision applies in all fours to the facts of the present case.

6. In the result, this writ petition is allowed, the impugned order of detention is quashed and the detenu is directed to be set at liberty forthwith

unless he is required in connection with any other case.

7. Petition allowed.