
(2010) 09 MAD CK 0150
In the Madras High Court
Case No : H.C.P. No. 852 of 2010

Vadana

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

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

Citation : (2010) 09 MAD CK 0150

Hon'ble Judges : M. Sathyanarayanan, J;M. Chockalingam, J

Bench : Division Bench

Advocate : M. Devaraj, for the Appellant; Babu Muthumeeran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This petition is brought forth by the wife of detenu challenging the order of the second respondent in C2/13198/2010 dated 13.4.2010, whereby the detenu Madasamy was ordered to be detained as a Bootlegger under the provisions of the Act 14 of 1982.

2. The Court heard the learned Counsel appearing for the petitioner and looked into the materials available on record, in particular, the order under challenge.

3. It is not in controversy that pursuant to the recommendation made by the Sponsoring Authority that the detenu is involved in four adverse cases viz. (i) Villupuram P.E. Wing Crime No. 1730 of 2009 for the offences under Sections 4(1-a), 4(1-A) altered as 4(1)(a) of Tamil Nadu Prohibition Act, 1937; (ii) Kiliyanur Police Station Crime No. 381/2009 for the offences under Sections 4(1-A) 4(1)(aaa) altered as 4(1)(aaa) of Tamil Nadu Prohibition Act, 1937; (iii) Villupuram P.E. Wing Crime No. 207/2010 for the offences under Sections 4(1-a) 4(1-A) altered as 4(1)(a) of Tamil Nadu Prohibition Act, 1937 and (iv) Kiliyanur Police Station Crime No. 110/2010 for the offences under Sections 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act, 1937 and ground case in Crime No. 136 of 2010

registered by Kiliyanur station for the offences under Sections 4(1)(i), 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act, 1937 for the incident that had taken place on 22.3.2010 and the detenu was arrested on the same day and remanded to judicial custody on 23.3.2010, the Detaining Authority, on scrutiny of materials placed, passed the detention order, after arriving at the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order, which is the subject matter of challenge before this Court.

4. Learned Counsel appearing for the petitioner, while attacking the order under challenge, brought to the notice of the Court two grounds. Firstly, the detenu moved for bail application in Crime No. 136 of 2010 registered by Kiliyan police Station in C.M.P. No. 2132 of 2010 before the learned Principal District and Sessions Judge, Villupuram and the same was dismissed on 6.4.2010 and the order of detention came to be passed 13.4.2010 i.e. within a week there from. In the said detention order, the Authority has observed that he was aware that it is most likely the detenu may come out on bail by filing bail application for the above case in the same or higher court. Thus, it would be quite evident that when the order of detention came to be passed, no bail application was pending before any Court of criminal law and hence the observation of the Authority is without any basis, material much less cogent material.

5. The second ground raised by the learned Counsel for the petitioner is that though case was registered under Sections 4(1-A) and 4(1)(aaa), charge sheet was laid u/s 4(1)(aaa) and not u/s 4(1-A) of the Tamil Nadu Prohibition Act, which is quite obvious from page No. 62 of the booklet. Contrarily it is mentioned in the grounds of detention in fourth adverse case, the detenu stood charged not only u/s 4(1)(aaa) but also u/s 4(1-A) of the Tamil Nadu Prohibition Act. It was not correct and also misleading the detenu. In this regard, a clarification should have been called for by the Detaining Authority, but failed to do so, which vitiates the detention order.

6. This Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

7. As could be seen from the available materials, the Detaining Authority has made the order of detention terming the detenu as a Bootlegger, on the strength of the materials placed before him pertaining to four adverse cases and one ground case as referred to above, and has recorded the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order.

8. In paragraph 5 of the detention order, it is stated as follows:

4. I am aware that Thiru. Madasamy, son of Pandiya Nadar is in remand in Sub Jail, Tindivanam in connection with the case in Cr. No. 136/2010 of Kiliyanur Police Station. The Superintendent, Sub Jail, Tindivanam is being requested to transfer him to the Central Prison, Cuddalore as Detention order has been passed under Tamil Nadu Act 14 of 1982. Thiru. Madasamy, son of Pandiya Nadar has

moved a bail application in C.M.P. No. 2132/2010 before the Principal District and Sessions Judge, Villupuram for Cr. No. 136/2010 of Kiliyanur Police Station and the same was dismissed on 06.04.2010. I am also aware that it is most likely he may come out on bail by filing bail application for the above case in the same or higher court. If he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public health and public order. On the materials placed before me, I am satisfied that the said Thiru. Madasamy, son of Pandiya Nadar is a "Bootlegger" and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982.

9. From the above, it is clear that the detenu moved for bail application in Crime No. 136 of 2010 registered by Kiliyan police Station in C.M.P. No. 2132 of 2010 before the learned Principal District and Sessions Judge, Villupuram and the same was dismissed on 6.4.2010 and the order of detention came to be passed 13.4.2010 i.e. within a week there from. But the Authority has observed that he was aware that it is most likely the detenu may come out on bail by filing bail application for the above case in the same or higher court. Thus, it would be quite evident that when the order of detention came to be passed, no bail application was pending before any Court of criminal law and hence the observation of the Authority is without any basis, material much less cogent material.

10. Added further, though case was registered under Sections 4(1-A) and 4(1)(aaa), charge sheet was laid u/s 4(1)(aaa) and not u/s 4(1-A) of the Tamil Nadu Prohibition Act, which is quite obvious from page No. 62 of the booklet. Contrarily it is mentioned in the grounds of detention that in fourth adverse case, the detenu stood charged not only u/s 4(1)(aaa) but also u/s 4(1-A) of the Tamil Nadu Prohibition Act. It was not correct and also misleading the detenu. In this regard, a clarification should have been called for by the Detaining Authority, but failed to do so. On these grounds, the detention order has got to be set aside.

11. Accordingly, the Habeas Corpus Petition is allowed, setting aside the detention order passed by the second respondent in C2/13198/2010 dated 13.4.2010. The detenu, namely, Madasamy, who is now confined at Central Prison, Cuddalore, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.