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**(2010) 08 MAD CK 0129**  
**In the Madras High Court**  
**Case No : H.C.P. No. 681 of 2010**

Vanitha

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

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**Date of Decision :** 25-08-2010

**Acts Referred:**

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

**Citation :** (2010) 08 MAD CK 0129

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

**Bench :** Division Bench

**Advocate :** R. Subadra Devi, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Chockalingam, J.—The petitioner is the wife of the detenu Kumar. She challenges an order of the second respondent in No. C3/D.O.

No. 27/2010 dated 13.4.2010, whereby her husband was ordered to be detained under Act 14/82 branding him as a Bootlegger.

2. The affidavit in support of the petition and the grounds of detention are looked into. The Court heard the learned Counsel on either side.

3. Pursuant to the recommendations made by the sponsoring authority that the detenu is involved in five adverse cases namely (1) Kandili PS Cr.

No. 60/09 u/s 4(1)(aa) of TNP Act; (2) Kandili PS Cr. No. 222/09 u/s 4(1)(aaa) of TNP Act; (3) Kandili PS Cr. No. 798/09 u/s 4(1)(a) of

TNP Act; (4) Kandili PS Cr. No. 850/09 u/s 4(1)(a) of TNP Act and (5) Kandili PS Cr. No. 117/20 u/s 4(1)(a) TNP Act and also in one ground

case registered by Kandili PS in Crime No. 258/2010 under Sections 4(1)(i), 4(1)aaa and 4(1-A)ii of TNP Act r/w 328 IPC for an occurrence

that took place on 21.3.2010, and he was arrested on the very day, the detaining authority after scrutiny of the materials placed, formed an opinion

that the detenu should be detained under Act 14/82 and hence passed the order which is under challenge.

4. The learned Counsel at the time of making submissions urged two points. Firstly, a bail application was filed in the ground case in Crl.M.P. No.

1621/2010 and the same was dismissed on 8.4.2010, by the Sessions Division, Vellore, and the order under challenge came to be passed on

13.4.2010. Thus on that date, there was no bail application pending; but the authority has stated that there was real possibility of his coming out on

bail which is without any material, much less cogent material. Secondly, there was delay in consideration of the representation. The order came to

be passed on 13.4.2010. The post detention representation was made on 16.4.2010. The same was rejected on 22.6.2010, and thus there was

huge, inordinate and unexplained delay, and hence it has got to be set aside.

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

6. It is not in controversy that pursuant to the recommendation made that he is involved in five adverse cases and one ground case as referred to

above, the order under challenge came to be passed branding him as a Bootlegger since his activities were prejudicial to the maintenance of public

order. It could be seen from paragraph 4 of the order that actually a bail application was filed in Crl.M.P. No. 1621/2010, and the same was

dismissed by the Sessions Division, Vellore, on 8.4.2010. The order of detention came to be passed on 13.4.2010. Concededly, there was no bail

application pending on that date. But the authority has stated that there was real possibility of his coming out on bail. This was without any material,

much less cogent material as the law would require. A Division Bench of this Court has held in a case reported in 2008 (1) MWN (CR.) 158 S.

Venugopal v. The Commissioner of Police and Anr. as follows:

9. Keeping in view the ratio of the aforesaid decisions and more particularly the opinion expressed by the Full Bench as well as the decision of the

Supreme Court in 2006 (1) SCC (CRI) 593 (cited supra) notwithstanding the seriousness of the allegations against the detenu, particularly relating

to the ground case, we are constrained to come to the conclusion that the

observation of the Detaining Authority ""that there is a real possibility of his coming out on bail by filing another Application before the same Court or Higher Courts since in similar cases bails are granted by the same Court or Higher Court"" is mere ipse dixit of the Detaining Authority without any cogent material. The offences allegedly committed by the detenu and the background in which such offences were allegedly committed clearly indicate that the offences are not of a routine nature wherein one can assume that bail would be granted almost as a matter of course either by the Sessions Judge or by the High Court.

The above decision is applicable to the present facts of the case.

7. Yet another circumstance noticed by the Court to set aside the order of detention, is the huge delay in consideration of the representation made.

As rightly pointed out by the learned Counsel, a representation was made on 16.4.2010, and the remarks were called for on 21.4.2010; but the remarks were received on 16.6.2010, and thus there was a huge delay. But, not even any explanation is coming forth for nearly about 50 days.

The same would cause prejudice to the valuable right and interest of the detenu. Both the grounds, in the considered opinion of the Court, would suffice to set aside the order.

8. In the result, this habeas corpus petition is allowed setting aside the order of the second respondent, and the detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.