

(2013) 08 MAD CK 0009
In the Madras High Court
Case No : H.C.P. No. 812 of 2013

Venmathi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1)(a), 4(1)(aa), 4(1)(k), 4(1A), 4(1A)ii

Citation : (2013) 4 MLJ(Cri) 22

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : O.S. Thilak Pasumbadiyar, for the Appellant; M. Maharaja, Assistant Public Prosecutor, for the Respondent

Judgement

C.T. Selvam, J.—The petitioner is the wife of the detenu. The detenu has been branded as a ""Bootlegger"" as contemplated under Tamil

Nadu Act 14 of 1982 and detained under the order of the 2nd respondent passed in C3/D.O. No. 27/2013, dated 12.05.2013. The detenu came

to adverse notice in the following cases:

S. No. Police Station and Crime No. Sections of Law

1. Virinchipuram Police Station Crime No. 59/2013 Section 4(1)(k) TNP Act, 1937
2. Virinchipuram Police Station Crime No. 91/2013 Section 4(1)(k) TNP Act, 1937
3. Virinchipuram Police Station Crime No. 171/2013 Section 4(1)(k), 4(1-A) ii TNP Act, 1937

The ground case alleged against the detenu is one registered by the Inspector of Police, Virinchipuram Police Station in Crime No. 288 of 2013

for offences under Sections 4(1)(a), 4(1-A)ii of Tamil Nadu Prohibition Act, 1937. Aggrieved by the order of detention, the present petition has

been filed.

2. Learned counsel for the petitioner would contend that the impugned detention order was passed by the detaining authority without application of

mind, inasmuch as, in respect of the similar case relied on by the detaining authority, there was no previous case against the accused therein,

whereas, in the instant case, there are three adverse cases against the detenu, which has not been looked into by the detaining authority while

passing the detention order.

3. We have heard the learned Additional Public Prosecutor also on the above submission.

4. It is seen that while passing the impugned detention order, the detaining authority has observed in paragraph 5 of the grounds of detention that in

a similar case registered at Vaniyambadi Prohibition Enforcement Wing in Crime No. 351 of 2012 against one Settu for the offences under

Sections 4(1)(aa), 4(1-A)ii of Tamil Nadu Prohibition Act, 1937, bail was granted by this Court in CrI.O.P. No. 14347 of 2012 on 19.06.2012

to the said accused Settu, based on which, the detaining authority further observed there is a real and imminent possibility of the detenu herein

coming out on bail by filing a bail application for the ground case before the High Court and if he comes out on bail, he will indulge in such further

activities, which will be prejudicial to the maintenance of public order and public health. While observing so, the detaining authority did not consider

the fact that the detenu has three adverse cases against him, whereas in the said similar case relied on by the detaining authority, there was no

previous case against the accused therein. Therefore, it is clear that there is total non-application of mind on the part of the detaining authority,

which vitiates the impugned detention order. Hence, the impugned detention order passed by the second respondent, detaining the detenu, namely,

Raji, S/o. Harikrishnan, vide C3.D.O. No. 27/2013, dated 12.05.2013, is quashed and the Habeas Corpus Petition is allowed. The above named

detenu, who is detained in Central Prison, Vellore is ordered to be set at liberty forthwith, unless his custody is required in connection with any

other case. However, it is made clear that the present order shall not give any advantage to the detenu in any of the regular proceedings.