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Court : Chennai

Decided On : Aug-27-2010

Judge : M. Chockalingam; M. Sathyanarayanan, Jj.

Acts : Constitution Of India - Article 226

Appeal No. : H.C.P. No.760 of 2010

Appellant : Thiru. Allimuthu.

Respondent : The State of Tamil Nadu, and ors.

Advocate for Def. : Mr. Babu Muthu Meeran, Adv.

Advocate for Pet/Ap. : Mr. E. Kannadasan, Adv.

Judgement :

1. This petition is brought forth by the father of the detenu challenging the order of the second respondent dated 12.4.2010 in his office Ref.No.C3.D.O. No.25/2010, whereby his son Palani 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)

Pernambut Police Station Crime No.659 of 2008 for the offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act, 1937; (ii) Pernambut Police Station Crime No.733 of 2009 for the offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act, 1937; (iii) Pernambut Police Station Crime No.48 of 2010 for the offence under Section 4(1)(aa) of the Tamil Nadu Prohibition Act, 1937; and (iv) Vellore Prohibition Enforcement wing Crime No.207 of 2010 for the offences under Sections 4(1)(aaa), 4(1-A)ii read with Section 6(A) of the Tamil Nadu Prohibition Act, 1937 and one ground case in Crime No.197 of 2010 registered by Pernambut police station for the offences under Sections 4(1)(b),aaa, 4(1-A)(ii) of the Tamil Nadu Prohibition Act, 1937 read with Section 328 of the Indian Penal code; for the incident that had taken place on 11.3.2010 and the detenu was arrested on the same day, 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. Advancing arguments on behalf of the petitioner, learned counsel would submit that in the instant case, insofar as Crime No.197 of 2007 is concerned, the Sponsoring Authority has produced the Doctor's Certificate dated 23.3.2010 along with his recommendation and it was also a relied upon document. A perusal of the document found at page No.52 of the booklet would indicate that the said Certificate did not contain the name of police station, crime number, name of the accused, etc. So long as the relied on document did not contain necessary particulars pertaining to crime No and the name of the accused in question, the Detaining Authority should have called for a clarification or should not have acted upon the document, but not done so, which is clearly indicate the non application of mind.

5. Learned counsel would further urge that there was a delay in consideration of the representation which was made on 26th April, 2010 and the rejection order was served on 26.5.2010 and hence, there was a huge delay. On these grounds, the detention order has got to be set aside.

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. It is not in controversy that the detenu was branded as a "Bootlegger". On the strength of the materials, the Authority has also found that the activities of the detenu were prejudicial to the maintenance of public order and health. In paragraph (g) of the detention order, it is stated as follows:- " During the course of investigation, Thiru.M.Mohan, Inspector of Police, Peranambut Police Station took up further investigation and examined Dr. Das Kumar, Chief Civil Surgeon, Medical Officer, Government Hospital, Gudiyatham about the effect of atropine poisonous substance reported in Chemical analysis Report of seized sample arrack. The Doctor in his certificate dated 23.3.2010 has stated that consumption of arrack mixed with atropine would excite the neurons followed by depression, and finally result in the destruction of medulla, causes Paralysis, then gradually reduces the function of heart, lungs and at last causes death. After some minutes from consumption of atropine, would cause odinophagia, abdominal pain and vomiting, congested face, dialated pupil and likely cause temporary loss of vision. Thereafter, it causes restless, palpitation, disfunctioning of heart and respiration, rigor, deep sleep and at last death. The doctor further stated that in the chemical analysis report, it shown 6.7 mgms. and the consumption of which would definitely cause sufferings and if consumed more would cause death. The case is under investigation."

9. From the reading of the above would clearly indicate that the Doctor's Certificate dated 23.3.2010 was also placed by the sponsoring Authority, which has stated that the consumption of arrack mixed with atropine would cause death. This was actually a relied upon document by the Detaining Authority. A perusal of the Certificate dated 23.3.2010 issued by the Medical person as found in page No.52

would indicate that it did not contain the name of the police station, crime number or the name of the accused, which is in general nature. Such document cannot form basis for arriving at the subjective satisfaction. Under such circumstances, a clarification should have been called for, but failed to do so. But the Detaining Authority has arrived at the subject satisfaction on the basis of the materials placed by the Sponsoring Authority. Hence, the detention order is termed as infirm and defective and it has got to be set aside.

10. Insofar as the ground of delay urged by the learned counsel for the petitioner is concerned, a representation was received by the authority on 26.4.2010, remarks were called for on 27.4.2010 and the remarks were received on 17.5.2010 and there was a delay of 20 days. Four days are noticed as holidays and remaining interval is more than 15 days, but not explained. It is needless to say that the inordinate delay was not explained by the State, which would cause prejudice to the right and interest of the detenu. On both 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 dated 12.4.2010 in his office Ref.No.C3.D.O. No.25/2010 The detenu, namely, Palani, who is now confined at Borstal School, Pudukottai is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case.

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