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## Gurusamy Vs The Secretary to Government of Tamil Nadu, Prohibition and Excise Department and Another

H.C.P. (MD) No. 314 of 2005

Court: Madras High Court (Madurai Bench)

Date of Decision: Dec. 21, 2005

**Acts Referred:** 

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 â€" Section 2, 2(1), 3, 3(2)

Hon'ble Judges: P.K. Misra, J; AR. Ramalingam, J

Bench: Division Bench

Advocate: S. Jeya Singh, for the Appellant; K. Chellapandian, Additional Public Prosecutor, for

the Respondent

Final Decision: Dismissed

## **Judgement**

## @JUDGMENTTAG-ORDER

P.K. Misra, J.

The order of preventive detention under Act 14 of 1982, on the allegation that detenu is a drug offender, is being

challenged in the present Habeas Corpus Petition by the detenu himself. The order of preventive detention is dated 22.3.2005.

2. In the grounds of detention, the detaining authority has referred to four adverse cases. Out of the four adverse cases, in three cases the detenu

was convicted under N.D.P.S. Act for illegal possession of 50 grams, 100 grams and 50 grams of ganja respectively. In the fourth adverse case,

charge sheet has been filed against him on the allegation that he was found in illegal possession of 50 grams of ganja. The ground case relates to an

incident dated 26.2.2005. It is alleged that the detenu was selling ganja. On the basis of these adverse cases and ground case, the detaining

authority came to the following conclusion:

7. Hence, I am satisfied that Thiru. Gurusamy is habitually stocks and sells intoxicating drugs and thereby committing offences and also acting in a

manner prejudicial to the maintenance of public health and as such, he is a ""Drug Offender"" as contemplated u/s 2(e) of Tamil Nadu Act 14 of

1982. By committing the above described offences, Thiru. Gurusamy caused widespread danger to public health of the people of that area,

thereby acted in a manner prejudicial to the maintenance of public health.

3. In the present Habeas Corpus Petition, learned Counsel for the petitioner has raised two contentions. The first contention is to the effect that the

order of preventive detention has been passed in a mechanical manner without application of mind. It has been submitted that all the adverse cases

relied upon by the detaining authority relate to offences of ""possession of ganja"" and the ground case is the only case where it was alleged that he

was selling ganja. However, the detaining authority without application of mind has concluded that the detenu ""... habitually stocks and sells

intoxicating drugs (sic.) and thereby committing offences and also acting in a manner prejudicial to the maintenance of public health..."". Similarly it

has been further concluded that ""by committing the above described offences, Thiru. Gurusamy caused widespread danger to public health of the

people of that area..."". The contention is to the effect that in none of the adverse cases there was any allegation that the present detenu was selling

intoxicating drugs. The conviction was on the ground that he was in possession of ganja. Even the quantity indicated in those cases appear to be

quite minimal. It is therefore submitted that without application of mind the detaining authority has come to the conclusion that the detenu was

habitually stocking and selling intoxicating drugs.

4. Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest-offenders, Goondas, Immoral Traffic

Offenders, Slum-grabbers and Video Pirates Act, 1982 (hereinafter referred to as ""the Act"") empowers the State Government or the authorised

officer, as envisaged u/s 3(2) i.e., the District Collector or the Commissioner of Police, to detain a drug offender with a view to prevent him from

acting in any manner prejudicial to the maintenance of public order. Section 2(1)(a)(ii) defines ""acting in any manner prejudicial to the maintenance

of public order" means - in the case of a drug-offender, when he is engaged or is making preparations for engaging, in any of his activities as a drug

offender, which affect adversely, or are likely to affect adversely, the maintenance of public order. The Explanation to such Section 2(1)(a) clarifies

that for the purpose of Section 2(1)(a) public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected

adversely, if any of the activities of any of the drug offender is causing or calculated to cause widespread danger to life or public health. Section

2(e) defines ""drug-offender"" to mean a person, who manufactures, stocks, imports, exports, sells or distributes any drug in contravention of any of

the provisions of the Drugs and Cosmetics Act, 1940 and the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Rules, notification,

and orders made thereunder.

5. The order of preventive detention can be passed to prevent any person acting in any manner prejudicial to the maintenance of public order. A

conjunct reading of Section 2(1)(a)(ii) along with the Explanation makes it clear that such power is to be exercised to prevent a person causing

widespread danger to life or public health. If a person is found to be merely in possession of the contraband, it cannot be said that he is causing any

widespread danger to life or public health. On the other hand, if a person sells any contraband drug, obviously he is likely to cause grave or

widespread danger to life or public health. The expression ""stock"" has not been defined in the Act. However, the ordinary meaning of the

expression ""stock"" is different from possession. As per the dictionary meaning ""stock"" means - a supply of goods or materials available for sale or

use. If a person is found in possession of a minimal quantity, it cannot be characterised as if he has stocked such item. Even though every case of

stocking"" would include obviously possession, mere possession in every case would not amount to ""stocking"" of some articles.

6. In the present case, as already seen, all the adverse cases relate to mere possession, whereas, in the order of detention, the Collector has come

to the conclusion that the detenu is habitually stocking and selling intoxicating drugs. It is of course true that the ground case relates to selling of

drugs, but the detaining authority has come to the conclusion that the detenu is habitually stocking and selling intoxicating drugs. The expression

habitually"" obviously means more than one occasion. If a person has sold or stocked intoxicating drugs on one occasion, it cannot be said that he

is habitually selling and stocking intoxicating drugs. Therefore, it is obvious that without keeping in view these aspects, the detaining authority has

mechanically passed the order of detention. There has been non-application of mind and, therefore, the order of detention is liable to be quashed.

7. The second contention raised by the learned Counsel relates to non-supply of legible copy of relevant documents. It has been contended by him

that many documents supplied to the detenu in the shape of a booklet were illegible and therefore the detenu was not in a position to make an

effective representation.

8. Even though such a contention has been denied by the respondents in their counter affidavit, on perusal of the booklet, we find that several

pages in the booklet are not legible. For example, pages 1, 2, 15 and 22 of the booklet appear to be quite illegible. It is thus obvious that assertion

of the detenu that he was not in a position to make effective representation because legible copies were not supplied, is worthy of acceptance. The

document are supplied to the detenu with a view to make effective representation. If some of the relevant documents supplied are not legible, it is

obvious that the detenu would be prejudiced and would not be in a position to make proper representation. This contention is therefore

acceptable.

9. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the detenu Gurusamy, son of Gurusamy is directed to be released
forthwith unless his presence is required in connection with any other case.