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**(2010) 10 MAD CK 0201**

**Madras High Court**

**Case No:** H.C.P. No. 960 of 2010

Vaitheeswari

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

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**Date of Decision:** Oct. 26, 2010

**Acts Referred:**

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

**Hon'ble Judges:** M. Chockalingam, J; C.S. Karnan, J

**Bench:** Division Bench

**Advocate:** M.V. Muralidharan, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

M. Chockalingam, J.

This petition challenges an order of detention made by the second respondent dated 12.5.2010, whereby the petitioner's husband Ganthi, was ordered to be detained under Act 14/82 branding him as a Bootlegger.

2. The Court heard the learned Counsel for the petitioner and also looked into all the materials available and 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 was involved in four adverse cases namely (1) Chengam PS Cr. No. 215/2010 u/s 4(1)(aa) TNP Act; (2) Chengam PS Cr. No. 311/2010 u/s 4(1)(aa) TNP Act; (3) Chengam PS Cr. No. 365/2010 u/s 4(1)(aa) TNP Act and (4) Chengam PS Cr. No. 74/2010 u/s 4(1)(aa) read with 4(1-A)(ii) TNP Act @ 4(1)(aa) TNP Act and also in a ground case registered by Chengam PS in Cr. No. 438/2010 u/s 4(1)(i) read with 4(1-A)(ii) TNP Act for an occurrence that took place on 16.4.2010, and he was arrested on the very day, the detaining authority on scrutiny of the

materials available took the view that the activities of the detenu were prejudicial to the maintenance of the public order and hence made the order under challenge.

4. The learned Counsel raised three points at the time of advancing arguments on behalf of the petitioner.

(i) The detenu moved Crl.O.P. No. 9507 of 2010 before this Court, and the same was dismissed on 12.5.2010. On the very day, the order came to be passed, and the authority has recorded that it was pending, but stated that it is most likely that he may come out on bail.

(ii) There was a representation made on 3.5.2010, and as could be seen from para 5a) of the grounds of detention, it was also rejected. But it is pertinent to point out that the rejection order has been made on the very day when the order of detention came to be passed, and hence it would be indicative of the fact that it was not properly considered, and there was no proper application of mind for rejection of the representation.

(iii) The arrest memo as found in page 19 of the booklet, did not contain the signature of the police officer or the accused.

(iv) Though it is mentioned that the arrest intimation was given to the wife of the detenu, no material is available to indicate the same. Hence the order 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. As could be seen above, the detaining authority after recording its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public order, has made the order under challenge. On scrutiny of the entire materials and consideration of the submissions made, this Court has to necessarily disagree with the learned Counsel on all the points. So far as the ground case in Crime No. 438/2010 registered under the provisions of TNP Act, is concerned, he moved Crl. O.P. No. 9507/2010 before this Court, and the same has also been dismissed on 12.5.2010. It is true that the order came to be passed on the very day. But paragraph 5 of the grounds of detention reads thus:

5. I am aware that Thiru. Gandhi is in remand in Chengam P.S. Crime No. 438/2010 and lodged in the Sub-Jail, Chengam. I am aware that a bail application was filed in District Sessions Court, Tiruvannamalai Cr. M.P. No. 1610/2010 on 21.04.2010 and it was dismissed by the court on the same day. I am also aware that subsequently he filed bail application before High Court, Chennai in Crl. O.P. No. 9507/2010 on 22.04.2010 and it is pending before the above court.

7. Now, at this juncture, it is pertinent to point out that the authority was very well aware that Crl. O.P. No. 9507/2010 was filed before this Court on 22.4.2010, and the

same was also pending on the day when the order came to be passed. It is pertinent to point out that the order of detention was passed on 12.5.2010. Therefore, it is quite natural that the authority would have been under the impression that the petition was pending. But, the fact remains that the petition has been dismissed by the Court on the very day. But, it could not have been brought to the notice of the authority who made the order of detention the very day. That a part, it was also a prohibition offence. In such circumstances, the authority was perfectly correct in observing that it is most likely that he may come out on bail.

8. As far as the other ground is concerned, the representation given on 3.5.2010, was considered on the day when the order came to be passed. It is pertinent to point out that the authority before making the order of detention, has considered and has also rejected the same on 12.5.2010, and thereafter, he has made the order under challenge. Therefore, this Court is unable to notice any infirmity in making such a rejection before passing the order under challenge.

9. As far as the arrest memo in page 19 of the booklet is concerned, it is only a true copy, and therefore, it could not contain the signature of either the Investigator or the accused concerned.

10. As far as the intimation given to the wife who is the petitioner herein, is concerned, the State is able to show that the petitioner herself has signed and received the intimation. In such circumstances, all the grounds put forth by the learned Counsel, cannot be applied to set aside the order.

11. In the result, this habeas corpus petition fails, and the same is dismissed.