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## S. Uma Vs The District Collector and District Magistrate and The Secretary to Government, Government of Tamil Nadu, Prohibition and Excise Department

H.C.P. (MD) No. 221 of 2010

Court: Madras High Court (Madurai Bench)

Date of Decision: June 10, 2010

Acts Referred:

Penal Code, 1860 (IPC) â€" Section 380, 387, 394, 454, 457

Hon'ble Judges: M. Chockalingam, J; A. Arumughaswamy, J

Bench: Division Bench

Advocate: P.Subburaj, for the Appellant; P.N. Pandidurai, Assistant Public Prosecutor, for the

Respondent

Final Decision: Allowed

## **Judgement**

## @JUDGMENTTAG-ORDER

M. Chockalingam, J.

This Writ Application challenges an Order of Detention made by the first respondent on 17.07.2010 whereby the

husband of the petitioner, by name, Sankarraj, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous

Activities of Boot-Leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video

Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a ""Goonda"".

2. The Court heard the learned Counsel appearing for the petitioner and looked into all the materials available, in particular, the order under

challenge.

3. The detenu was involved in five adverse cases as given below:

SI Police Station and Section of

law

No Crime Number

1 Thiruvengadam Police Station 457 and 380

**IPC** 

Crime No. 119/2007

2 Thiruvengadam Police Station 457 and 380

**IPC** 

Crime No. 140/2007

3 Thiruvengadam Police Station 454 and 380

**IPC** 

Crime No. 33/2008

4 Sankarankovil Police Station 454, 457

Crime No. 399/2008 and 380 IPC

5 Sankarankovil Police Station 454, 457

Crime No. 36/2009, and 380 IPC

Apart from that, the detenu was also involved in one ground case in Crime No. 250/2009 under Sections 387, 394(b), and 506(ii) IPC registered

by Sankarankovil Town Police. It is not in controversy that pursuant to the recommendation made by the sponsoring authority that the detenu was

involved in five adverse cases and in one ground case referred to above, on scrutiny of the materials, the detaining authority has made the order

under challenge branding him as a ""Goonda"" after recording its subjective satisfaction that the activities of the detenu was prejudicial to the

maintenance of public order and the same is the subject matter of challenge before this Court.

4. According to the learned Counsel for the petitioner, the detenu was involved in five adverse cases and in one ground case and no bail

application was filed either in any one of the adverse cases or in the ground case and the detaining authority has not even stated as to whether there

was any real possibility or imminent possibility of the detenu coming out on bail and thus, he has not even formed any opinion and has not recorded

its subjective satisfaction arrived by him and therefore, he has stated that if the detenu comes out on bail, he would indulge in such further activities.

It was clearly an indicative of the fact of non-application of mind on the part of the detaining authority. On this ground, the order of detention has

got to be set aside.

- 5. The Court heard the learned Additional Public Prosecutor on the above ground.
- 6. It is not in controversy that on the recommendation made by the sponsoring authority that the detenu was involved in five adverse cases and in

one ground case, the detaining authority has made the order of detention after recording its subjective satisfaction that the activities of the detenu

were prejudicial to the maintenance of public order. Paragraph 6 of the order of detention reads as follows:

6. I am aware that Thiru. Sankarraj is in remand in Sankarankovil Town Police Station Crime Number 250/2009 and he has not moved any bail

application so far in all cases. If he comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the

public order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such

activities, which are prejudicial to the maintenance of the public order. On the materials placed before, I am satisfied that Thiru. Sankarraj is a

Goonda"" and there is a compelling necessity to detain him in order to prevent him from indulging in acts which are prejudicial to the maintenance

of public order under the provisions of the Tamilnadu Act 14 of 1982.

7. A reading of the above would clearly indicate that the detaining authority has not even stated that whether there was any imminent or real

possibility of the detenu coming out on bail but on the contrary, he has stated that in future, he may indulge in such activities. In so long as, he was

in custody, there is no question of indulging in such activities. Thus, it would be quite clear that the detaining authority has not even arrived at the

subjective satisfaction as one required by law. Hence, the order cannot be, but termed as ""infirm"" and the order of detention has got to be set

aside.

8. Accordingly, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any

other case. The Habeas Corpus Petition is allowed.