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(2007) 07 MAD CK 0274

Madras High Court

Case No: H.C.P. No. 356 of 2007

Ramesh APPELLANT

Vs

State RESPONDENT

Date of Decision: July 30, 2007

Acts Referred:

- Constitution of India, 1950 - Article 22
- Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 - Section 2, 4(1), 4(1A)

Hon'ble Judges: R. Banumathi, J; P.K. Misra, J

Bench: Division Bench

Advocate: O.S. Thilak Pasumbadiar, for the Appellant; Babu Muthu Meeran, Addl. PP., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.
The petitioner challenges the detention order dated 26.02.2007, whereby the Petitioner''s brother was detained, branding him as "Bootlegger", as contemplated u/s 2(b) of Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. Heard Mr. O.S. Thilak Pasumbadiar, learned Counsel for the petitioner and Mr. M. Babu Muthu Meeran, Addl. PP., learned Counsel for the respondent.

3. The detenu had earlier come to adverse notice in seven prohibition cases of various police stations in Nagapattinam District. The ground case relates to the alleged selling of illicit arrack on 11.02.2007. Case was registered in Cr. No. 225/2007 u/s 4(1)(aaa), 4(1)(i) read with 4(1-A) of T.N.P. Act of Nagapattinam P.E. Wing. Chemical analysis report of the

sample had shown that the illicit arrack contained poisonous substance - 2.5 mg of atrophine. On being satisfied that the detenu is indulging in activities which are prejudicial to the maintenance of public order and public health, the detenu was detained under Act 14/1982.

4. Even though several contentions were raised and argued as well, we do not deem it necessary to consider each and every one of them as in our view, the main ground of challenge i.e., non consideration of representation sent on behalf of the detenu would have the effect of vitiating the detention order.

5. The detention order was passed on 26.02.2007. The counsel for the detenu had sent a legal notice/representation on 13.03.2007 to the Secretary to Government, Home, Prohibition Excise Department, seeking certain clarification, whether the detenu is in custody and pointing out certain discrepancies and that there was non-application of mind by the Detaining Authority while passing the detention order. In the representation, the detenu has also sought for copies of certain documents like lock-up prisoner check register, para register, food distribution register etc.

6. The learned Counsel for the petitioner has produced the acknowledgment showing service of notice upon the Secretary to Government. That representation sent on behalf of the detenu does not seem to have been considered and disposed of by the Government till this date. The reason for immediate consideration of the representation is too obvious to be stressed. Personal liberty of a person is at stake. Any delay on the part of the Appropriate Authority would be unconstitutional because the Constitution enshrines fundamental right of a detenu to have his representation considered. The words, "shall afford him an earliest opportunity of making a representation against the order" in Clause (5) of Article 22 of Constitution suggests the obligation of the Government to afford an opportunity to the detenu for making a representation. If the detenu does not exercise his right to make representation at that stage, but presents representation to the Government after the Government has approved the Order of detention, the Government still has to consider such representation. In our view, non consideration of representation sent on behalf of the detenu would vitiate the detention order.

7. In the result, the detention order is set aside and this petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.