

Andhra Pradesh High Court - Amravati

Kothapalli Pavani vs The State Of Ap on 9 May, 2023

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU  
AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

WRIT PETITION No.1378 of 2023

ORDER:(per Hon'ble Sri Justice V.Srinivas)

In this writ petition, the petitioner is challenging the order of detention of her husband by name Kothapalli Raghurami Reddy, S/o.Venkata Subba Reddy, aged 34 years, in order of detention vide Ref.C1/141/M/2022, dated 15.12.2022 passed by the 2nd respondent-The Collector and District Magistrate, YSR

District, Kadapa, which was confirmed by the 1st respondent vide G.O.Rt.No.224, General Administration (SC.I) Department, dated 02.02.2023 and prays to direct the respondent authorities to set the detenu at liberty forthwith.

2. The Collector and District Magistrate, YSR District, Kadapa, while categorizing the detenu as a "Bootlegger" within the definition of Section 3(1) and 3(2) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act 1 of 1986') passed the impugned order of detention.

3. Heard Sri Ramarao Kochiri, learned counsel for the petitioner and Sri Syed Khader Mastan, learned counsel attached to the office of learned Additional Advocate General for the respondents.

4. Learned counsel for the petitioner submits that the grounds for detention are not at all grievous offences, that he was allegedly involved in seven crimes under Sections 34(A), 34(e) and 7(B) r/w.8(B) of Andhra Pradesh Prohibition Act, 1995 and they can be dealt under general laws. It is also stated that the detenu was already granted bail in five crimes, out of seven crimes; that the sponsoring authority did not place the copies of bail orders along with grounds of detention before the detaining authority to come to the right conclusion and the impugned order is passed mechanically. Further the authorities did not supply relevant material so as to enable the detenu to submit representation to the Advisory Board. The learned counsel relied upon the order of this Court in W.P.No.5469 of 2022.

5. Per contra, Sri Syed Khader Mastan, learned counsel attached to the office of Additional Advocate General reiterating the averments made in the counter affidavit filed by the respondents, justifying the order of the District Magistrate as the detenu is a habitual offender and argues that his acts are prejudicial to the public order, that he is a bootlegger who is selling adulterated liquor. He states that the order impugned in the writ petition do not warrant any interference of this Court under

Article 226 of the Constitution of India.

6. A perusal of the order passed by this Court in W.P.No.5469 of 2022 dated 11.07.2022 clearly demonstrates that the existence of element of disturbance to the public order is held to be a sine qua non for invoking the provisions of Section 3 of the Act 1 of 1986. The said power, conferred on the authorities, is required to be exercised with a lot of care, caution and circumspection and that same cannot be exercised in a routine and mechanical manner. In Chittipothula China Muthyalu (W.P.No.5469 of 2022), this Court considering the rule position stated in Ram Manohar Lohiya v. State of Bihar<sup>1</sup>, Piyush Kanthilal Mehatha v. Commissioner of Police Ahmadabad City<sup>2</sup>, Malladha K.Sriram v. State of Telangana<sup>3</sup>, held that the satisfaction, as stipulated under Section 3 of the Act, should necessarily be a subjective satisfaction but is required to be on the basis of cogent and convincing material and not on the foundation of stale and sterile reasons. Recording of reasons for such satisfaction is also indispensable and imperative. So long 1 AIR 1966 SC 740 2 1989 Supp (1) SCC 322.

3 2022 SCC OnLine SC 424 as ordinary criminal law is adequate to deal with the offences, preventive detention without subjecting an individual to the procedure of free and fair trial would infringe the fundamental right to life and liberty guaranteed under Chapter III of Constitution of India.

7. In Syed Sabeena v. The State of Telangana and others<sup>4</sup> at Para No.17 it is held by the APEX Court that: "in any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case."

8. These factors are conspicuously missing in the impugned order. The alleged offences are under the Prohibition laws only. In addition, as per the contention of the petitioner, the detenu was granted bail in five crimes, out of seven crimes, but the said fact is not considered by the detaining authority. A perusal of the detention order and grounds of detention, would show the detaining authority as well sponsoring authority has not taken into consideration the said fact and no opinion has been<sup>4</sup> 4 CrI.A.No.909 of 2022 (SLP(CrI).No.4283 of 2022) (Supreme Court of India) expressed as to whether the preventive detention of detenu was essential or not, and no such discussion was made in the order. The further satisfaction that needs to be recorded that he will commit further crimes is not clear. It is not clear how the authority came to the conclusion that the ordinary law is not sufficient to stop the alleged crimes. Besides perusing the preventive detention order it appears the said order was passed without examining the existence of a live and proximate link between the event and the detention, which is tantamount to punishment.

9. Having regard to the facts of this case, this Court is of the considered opinion that the order impugned was made without proper application of mind and there is a serious procedural violation. The detenu will not fall under the category of Section 3(1) and 3(2) of the Act and this Court could not find that the order of detention has any material to either substantiate or justify the said allegation that the detenu is a 'Bootlegger' whose activities would be actually prejudicial to public

order.

10. For the reasons recorded, this Writ Petition is allowed, setting aside the order of detention passed by the 2nd respondent vide proceedings in Ref.C1/141/M/2022, dated 15.12.2022 as confirmed by the State Government vide G.O.Rt.No.224, General Administration (SC.I) Department, dated 02.02.2023. Consequently, the detenu namely Kothapalli Raghurami Reddy, S/o.Venkata Subba Reddy, aged 34 years, is directed to be released forthwith by the respondents if the detenu is not required in any other cases. No order as to costs.

11. Miscellaneous petitions pending if any, stand closed.

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JUSTICE V.SRINIVAS Date: 09.05.2023 Note: Issue C.C. today  
B/o.

Krs THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU AND THE HON'BLE SRI JUSTICE  
V.SRINIVAS WRIT PETITION No.1378 of 2023 DATE: 09.05.2023 Krs