

Andhra Pradesh High Court - Amravati

R Suchithra vs The State Of Andhra Pradesh 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.4202 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 A.Francis Babu @ Francis @ Frances, S/o.B.Aron, aged 26 years, in order of detention vide REV-CSEC0PDL(PRC)/30/2022-MAGL4 dated 14.10.2022 passed by the 2nd respondent-The Collector and District Magistrate, Chittoor District,

which was confirmed by the 1st respondent vide G.O.Rt.No.2615, General Administration (SC.I) Department, dated 05.12.2022 and prays to direct the respondent authorities to set the detenu at liberty forthwith.

2. The Collector and District Magistrate, Chittoor District, 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. Counter-affidavit is not filed by the respondents.

4. Heard Sri M.M.M.Srinivasa Rao, learned counsel for the petitioner and Sri Syed Khader Mastan, learned counsel attached to the office of the learned Additional Advocate General for the respondents.

5. Learned counsel for the petitioner submits that the detenu is in judicial custody at the time of passing of detention order; that the Hon'ble Apex Court time and again held that the detaining authority has to record its satisfaction about the necessity to pass the detention order; that five cases under Section 7(B) r/w.8(B) of Andhra Pradesh Prohibition Amendment Act, 2020 were foisted against the petitioner for statistical purpose, which are not at all grievous offence and they can be dealt under general laws; and that he was already granted bail in all the above cases but the same were not even considered by the authority. It is also submitted that the representation submitted by the petitioner for recall of detention order was rejected by the 2nd respondent. The learned counsel also relied upon judgment of the Hon'ble Supreme Court in Syed Sabeena v. The State of Telangana.

6. It is brought to the notice of this Court by the learned counsel for the petitioner that the issue in the present writ petition is squarely covered by the order of this Court in W.P.No.36437 of 2022 dated 21.03.2023. The learned counsel for the petitioner further submits that the preventive detention shall not be passed or confirmed in these circumstances.

1 Crl.A.No.909 of 2022 (SLP.(CrI).No.4283 of 2022) (Supreme Court of India)

7. The learned counsel appearing for the respondents submitted that the detenue is a habitual offender and his acts are prejudicial to the public order; that he is a bootlegger who is selling distilled liquor, which is unfit for human consumption and injurious to health and that having regard to the gravity of the offences, the orders impugned in the writ petition do not warrant any interference of this Court and the present writ petition is not maintainable.

8. A perusal of the order passed by this Court in Chittipothula China Muthyalu (W.P.No.5469 of 2022 dated 11.07.2022) clearly shows 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 the said order, this Court considering the rule position stated in Ram Manohar Lohiya v. State of Bihar 2 PiyuhhaanthilalMehatha v. Commihhioner of Police Ahmadabad City 3 Malladhaa.Sriram v. State of Telangana⁴, held that the satisfaction, as stipulated under Section 3 of the Act, should necessarily be a subjective satisfaction and 2 AIR 1966 SC 740 3 1989 Supp (1) SCC 322.

4 Crl.A.No.561 of 2022 (Supreme Court of India) 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 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. These factors are missing in the impugned order. The alleged offences are under the Prohibition laws only.

9. In Syed Sabeena case 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 detenue 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."

10. Admittedly, the detention order was passed when the detenue is in judicial custody basing on five cases that were registered against him and he was granted bail in all those cases. The said facts are not disputed by the learned counsel for the respondents nor did they even file a counter to deny the case of petitioner. 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 fact that the detenue was on bail in all those cases and no opinion has been expressed as to whether the preventive detention of detenue was essential or not, and no such discussion was made in the order.

11. Having regard to the facts of this case, this Court is of the considered opinion that the orders impugned were made without proper application of mind and there is a serious procedural violation. Hence, we are of the opinion that the detenu will not fall under the category of Section 2(b) of the Act since the order of detention does not show 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.

12. Accordingly, this Writ Petition is allowed setting aside the order of detention passed by the 2nd respondent in REV- CSECoPDL(PRC)/30/2022-MAGL4, dated 14.10.2022 as confirmed by the State Government in G.O.Rt.No.2615, General Administration (SC.I) Department, dated 05.12.2022. Consequently, the detenu namely Francis Babu @ Francis @ Frances, aged 26 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.

13. Miscellaneous petitions pending if any, stand closed.

JUSTICE D.V.S.S.SOMAYAJULU _____
JUSTICE V.SRINIVAS Date: 09.05.2023 Note:

Issue C.C. today.

B/o.

Pab THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU AND THE HON'BLE SRI JUSTICE V.SRINIVAS WRIT PETITION No.4202 of 2023 DATE: 09.05.2023 Pab