

Andhra Pradesh High Court - Amravati

Y Maddilety vs The State Of Ap on 12 May, 2023

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

THE HON'BLE SRI JUSTICE V.SRINIVAS

I.A.No.1 of 2023

IN/AND

WRIT PETITION No.712 of 2023

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

Initially, in this writ petition, the petitioner has challenged the order of detention of his brother by name Yerukali Polenti Satyam, S/o late Yerukai Devanna, in order of detention vide REV-CSECOPDL(PRC)/5/2022-SA(C1)-COLLKRNL, dated 28.11.2022 passed by the 2nd respondent-The Collector & District Magistrate, Kurnool

District and prays to direct the 4th respondent to produce the detenu, who is detained in Central Prison, Kadapa, YSR District and to set the detenu at liberty forthwith.

2. Since the said detention order passed by the 2nd respondent was confirmed by the 1st respondent-State, the petitioner filed I.A.No.1 of 2023 to amend the prayer of the writ petition as '...to issue writ, order or direction more particularly one in the nature of writ of Habeas Corpus under Article 226 of the Constitution of India directing the 4 th respondent to produce the detenu i.e., Yerukali Polenti Satyam, S/o late Y.Devanna, who is now lodged in Central Prison, Kadapa, YSR Kadapa District before this Hon'ble Court and he may be set at liberty/ordered to be released forthwith by declaring the detention order passed by the 2nd respondent herein vide proceedings REV- CSECOPDL(PRC)/04/2022-SA(C1)-COLLKRNL, dated 28.11.2022 as confirmed by the 1st respondent herein vide G.O.Rt.No.182, dated 27.01.2023 as arbitrary, illegal and unconstitutional and pass such order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.'

3. In view of the same, I.A.No.1 of 2023 is allowed and the prayer of the writ petition is ordered to be amended as prayed for.

4. The Collector and District Magistrate, Kurnool District, while categorizing the detenu as "Goonda" within the definition of Sections 2(g) 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. Later, the said order of detention came to be confirmed by the Government vide G.O.Rt.No.182, dated 27.01.2023.

5. Counter-affidavit is filed by the Collector and District Magistrate-2nd respondent, denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

6. Heard Sri V.Nitesh, 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.

7. Learned counsel for the petitioner submits that the detinue was allegedly involved in fourteen crimes, in which, some of the cases registered due to family disputes and they can be dealt with under general laws; that he was already acquitted in five cases, but the same were not even considered by the authority; that the order of detention do not have any material to either substantiate or justify the detinue as goonda and that the preventive detention shall not be passed or confirmed in these circumstances and that offences alleged against the detinue can be dealt with under the ordinary law and they do not involve any disturbance of public order and the same cannot be used for issuance of preventive detention order under Section 3 of the Act 1 of 1986. The learned counsel also relied upon the orders passed by this Court in W.P.No.30649 of 2022 dated 06.03.2023 and W.P.No.39085 of 2022 dated 23.03.2023.

8. 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 orders of this Court in W.P.No.30649 of 2022 dated 06.03.2023 and W.P.No.39085 of 2022 dated 23.03.2023 and orders thereon were placed on record.

9. On the other hand, reiterating the averments made in the counter affidavit filed by the respondents, it is submitted by the learned counsel for the respondents that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the present writ is not maintainable. He further submits that having regard to the gravity of the offences, the order impugned in the writ petition do not warrant any interference of this Court.

10. A perusal of the order dated 06.03.2023 passed by this Court in W.P.No.30649 of 2022 clearly demonstrates that this court discussed the law laid down in *Gattu Kavitha v. State of Telangana*¹, *Rushikesh Thanaji Bhoite v. State of Maharashtra*² and three judge Bench judgment of the Apex Court in *Rekha v. State of Tamilnadu*³ case, in which the Apex Court held as follows:

"The detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority passed the detention order under the impression that no bail application of the accused was pending, but in similar cases bail had been granted by the courts. We have already stated above that no details of alleged similar cases have been given. Hence, the detention order in question cannot be sustained".

1 2017(1) ALD CrI.224 2 (2012) 2 SCC 72 32011 (5) SCC 244

11. After considering the above, this Court allowed W.P.No.30649 of 2022 granting relief in favour of the petitioner.

12. On perusal of detention order, it is obvious that the preventive detention was ordered against the detenu basing upon fourteen crimes, out of which seven crimes were registered against him on a complaint filed by his wife. It appears that it is a family dispute and in those crimes the detenu was already acquitted. In two cases pending for trial i.e., in Cr.Nos.11 of 2017 and 61 of 2018 on the file of Kurnool III Town P.S. it is said that the detenu is said to have committed bodily offences and it is clear these offences can be dealt with under general penal laws. Nothing to the contrary is noted.

13. Even procedural laws were also not strictly followed by the sponsoring authority, while passing the detention orders, as it is the petitioner's specific contention that till date no advisory board constituted in this case and advisory board did not pass any orders nor recommended any orders, which amounts to procedural irregularity as well not following the provisions contained under the Act 1 of 1986.

14. Admittedly, on perusal of record, it reveals that a blanket detention order was passed without specifying a period of detention which is invalid as which is mandated under Section 3(2) of the Act; the same is also reported in Lahu Shrirang Gatkal v. State of Maharashtra⁴. The fact that the detenu was granted bail in some of the cases was not considered in the impugned detention order. This by itself vitiates the order of detention. As held by the Apex Court, the 'further satisfaction' required to be recorded in such circumstances is also conspicuously absent in the detention order. This factor also vitiates the entire order of detention.

15. 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. Hence, we are of the opinion that the detenu will not fall under the category of Section 2(g) 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 'goonda' whose activities would be actually prejudicial to public order.

16. Accordingly, this Writ Petition is allowed setting aside the order of detention passed by the 2nd respondent vide proceedings in REV- CSECOPDL(PRC)/5/2022-SA(C1)-COLLKRNL, dated 28.11.2022 as confirmed by the State Government vide G.O.Rt.No.182, dated 27.01.2023 and consequently, the detenu namely Yerukali Polenti 4 2017 (13) SCC 519 Satyam, S/o late Yerukai Devanna, is directed to be released forthwith by the respondents if the detenu is not required in any other cases.

17. Miscellaneous petitions pending if any, stand closed. No order as to costs.

JUSTICE D.V.S.S.SOMAYAJULU _____
JUSTICE V.SRINIVAS Date: 12.05.2023 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.712 of 2023 DATE: 12.05.2023 Pab