

Andhra Pradesh High Court - Amravati

Amrutha Durga 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.41766 of 2022

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

Initially, in this writ petition, the petitioner challenged the order of detention of her husband Amrutha Venkayya, S/o.Kotaiah, aged 41 years, vide Rc.No.REV-MGSR0PDL(PRC)/5/2022-SA(MAGL-1)-KCO, dated 02.11.2022 passed by the 2nd respondent-The Collector & District Magistrate,

Krishna District, and prays to direct the respondent authorities to set the detenu at liberty forthwith.

2. Since the said detention order passed by the 2nd respondent was confirmed by the 1st respondent vide G.O.Rt.No.2722 General Administration (SC.I) Department, dated 19.12.2022, then 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 directing the 4th respondent, the Superintendent, Central Prison, Rajamahendravaram, to produce the detenu viz., Amrutha Venkayya, S./o.Kotaiah, before this Court and set him at liberty forthwith by declaring the order of detention vide proceedings Rc.No.REV-MGSR0PDL(PRC)/5/2022-SA(MAGL-1)- KCO, dated 02.11.2022 passed by the 2nd respondent and consequential confirmation order issued by the 1st respondent vide G.O.Rt.No.2722 General Administration (SC.I) Department, dated 19.12.2022 as illegal, arbitrary, against the principles of natural justice, against Article 21 of the Constitution of India and to pass such other order or orders which this Hon'ble Court may deem fit and proper in the circumstances of the case'.

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, Krishna District, while categorizing the detenu as a "Bootlegger" within the definition of Section 3(1) and 3(2) r/w.2(a) and 2(b) 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. The same was confirmed by the 1st Respondent-State.

5. Heard Sri K.V.Aditya Chowdary, learned counsel for the petitioner and Sri Syed Khader Mastan, learned counsel attached to the office of learned Additional Advocate General for the respondents.

6. Learned counsel for the petitioner submits that the offences alleged against the detinue is under Section 7(A) and 7(B) r/w.8(B) and 8(E) of Andhra Pradesh Prohibition Act, 1995 and they can be dealt under general laws. It is also stated that the detinue was already granted bail in all the six 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 that the detention authority erred in passing the impugned order without considering the material. He relied upon judgments passed by this Court in *Gadwala Brahmaiah v. State of Andhra Pradesh*<sup>1</sup>. As well the judgment of the Hon'ble Supreme Court in *Munagala Yadamma v. State of Andhra Pradesh*<sup>2</sup>.

7. 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 detinue is a habitual offender and argues that his acts are prejudicial to the public order and that he is a bootlegger who is selling adulterated liquor. He further 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. 1 2023 SCC Online AP 431 22012 (2) SCC 386

8. A perusal of the order passed by this Court in W.P.No.5469 of 2022 and *Gadwala Brahmaiah* case, clearly demonstrates that the existence of element of disturbance to the public order is 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* and another<sup>3</sup>, *Piyush Kanthilal Mehatha v. Commissioner of Police Ahmadabad City* and another<sup>4</sup>, *Malladha K. Sriram v. State of Telangana* and others<sup>5</sup>, and held that the satisfaction, as stipulated under Section 3 of the Act, should necessarily be a subjective satisfaction and 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 3 AIR 1966 SC 740 4 1989 Supp (1) SCC 322.

5 Crl.A.No.561 of 2022 (Supreme Court of India) 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 orders. The alleged offences are under the Prohibition laws only.

9. In the present case also the detinue was already enlarged on bail even prior to detention order and the said fact is not disputed by the respondents. 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 detinue was on bail in all those cases and no opinion has been expressed as to whether the preventive detention of detinue was essential or not. No such discussion was made in the order.

10. Having regard to the facts of this case, this Court is of considered opinion that the order impugned was passed without proper application of mind and there are serious procedural violation also. The detenue will not fall under the category of Section 3(1) and 3(2) r/w.2(a) and 2(b) of the Act. This Court could not find that for order of detention the authority had material to either substantiate or justify the said allegation that the detenue is a 'Bootlegger' whose activities would be actually prejudicial to public order.

11. For the reasons recorded, this Writ Petition is allowed setting aside the order of detention passed by the 2nd respondent vide proceedings in Rc.No.REV-MGSRoPDL(PRC)/5/2022-SA(MAGL-1)-KCO, dated 02.11.2022 as confirmed by the State Government vide G.O.Rt.No.2722, General Administration (SC.I) Department, dated 19.12.2022. Consequently, the detenue namely Amrutha Venkayya, S/o.Kotaiah, aged 41 years, is directed to be released forthwith by the respondents if the detenue is not required in any other cases. No order as to costs.

12. Miscellaneous petitions pending if any, stand closed.

----- JUSTICE D.V.S.S.SOMAYAJULU  
----- JUSTICE V.SRINIVAS Date: 12.05.2023 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 I.A.NO.1 OF 2023 IN/AND WRIT PETITION No.41766 of 2022 DATE: 12.05.2023 krs