

Andhra Pradesh High Court - Amravati

Mekala Puspha Reddy 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

WRIT PETITION No.40489 of 2022

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

In this writ petition, the petitioner is challenging the order of detention of her husband Mekala Vamsidhar Reddy, S/o.C.Rami Reddy, C/o.M.Venkat Reddy, aged 32 years, vide REV-MAGL-1/786/2022, dated 05.07.2022 passed by the 2nd respondent-The Collector & District Magistrate, Tirupati District,

which was confirmed by the 1st respondent vide G.O.Rt.No.1782, General Administration (SC.I) Department, dated 26.08.2022 and prays to direct the respondent authorities to set the detenu at liberty forthwith.

2. The Collector and District Magistrate, Tirupati District, while categorizing the detenu as "Goonda" within the definition of Section 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') and passed the impugned order of detention. The same was confirmed by the 1st Respondent-State.

3. Heard Sri D.Purna Chandra Reddy, 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 order of detention passed in a mechanical manner and non-existent grounds; that basing on the three different cases registered against the detenu, the impugned order is passed; that in all the three cases initially the detenu was not shown as accused and basing on the confession of other accused, he was falsely implicated in cases under Section 457 and 380 of IPC; that there is every possibility for him to obtain bail in the said cases, but the said fact was suppressed by the sponsoring authority before the detaining authority and due to non-furnishing of relevant material, the detenu lost opportunity to submit an effective representation before the concerned authorities. He also submits that the penal laws are sufficient to deal with the situation and that invoking the provisions of preventive detention is completely unnecessary.

5. He further submits that the detaining authority did not supply the material relied on by them within the stipulated period of five days and only the order and grounds of detention along with

material supplied after about three weeks, but the subsequent developments such as approval and confirmation of the order of preventive detention were not even informed to the detenu, thereby, it vitiates the entire order of preventive detention.

6. It is brought to the notice of this Court by the learned counsel for the writ petitioner that the issue in the present Writ Petition is squarely covered by the order of this Court in W.P.No.30649 of 2022, dated 06.03.2023.

7. On the other hand, reiterating the averments made in the counter affidavit filed by the respondents, it is submitted by Sri Syed Khader Mastan, learned counsel attached to the office of Additional Advocate General that having regard to the gravity of the offences, the orders impugned in the Writ Petition do not warrant any interference of this Court under Article 226 of the Constitution of India.

8. A perusal of the order dated 06.03.2023 passed by this Court in W.P.No.30649 of 2022 clearly demonstrates that all the issues that have been raised in the present Writ Petition were also raised in the aforesaid Writ Petition and this Court discussed the law laid down in *Gattu Kavitha v. State of Telangana*¹ case and *Rushikesh Thanaji Bhoite v. State of Maharashtra*² case 1 2017(1) ALD CrL.224 2 (2012) 2 SCC 72 and three judge Bench judgment of 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".

9. Recently, the Hon'ble Supreme Court in *Pramod Singla v. Union of India and Others*⁴, held at Para No.48 as follows :

48. As has been mentioned above, preventive detention laws in India are a colonial legacy, and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. In such a circumstance, where there is a possibility of an unfettered discretion of power by the Government, this Court must analyze cases arising from such laws with extreme caution and excruciating detail, to ensure that there are checks and balances on the power of the Government. Every procedural rigidity must be followed in entirety by the Government in cases of preventive³ 2011 (5) SCC 244 4 2023 SCC Online SC 374 detention, and every lapse in procedure must give rise to a benefit to the case of the detenu. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties. This act of protecting civil liberties, is not just the saving of rights of individuals in person and the society at large, but is also an act of preserving our

Constitutional ethos, which is a product of a series of struggles against the arbitrary power of the British state.

10. After considering the law laid down above, W.P.No.30649 of 2022 was allowed granting relief in favour of the petitioner therein. In the present case also the detaining authority has not considered the vital aspect that the detenu was shown as accused basing on the confession of other accused. Similarly, the fact that the detenu was in judicial custody at the time of passing detention order is not considered and no reasons are assigned that he will commit further crimes. It is not clear how the authority came to the conclusion that the ordinary law is not sufficient to prevent the alleged crimes and that invoking provisions of preventive detention is completely unnecessary as settled by this Court in several judgments. Even in the judgment Pramod Singla case (referred to supra), it is held that "every lapse in procedure must give rise to a benefit to the case of the detenu". This Court could not find that the order of detention refers to clear material to either substantiate or justify the said allegation that the detenu is a 'Goonda'.

11. For the aforesaid reasons, this Writ Petition is allowed, setting aside the order of detention passed by the 2nd respondent vide proceedings in REV-MAGL-1/786/2022, dated 05.07.2022 as confirmed by the State Government vide G.O.Rt.No.1782, General Administration (SC.I) Department, dated 26.08.2022. Consequently, the detenu namely Mekala Vamsidhar Reddy, S/o.C.Rami Reddy, C/o.M.Venkat Reddy, aged 32 years, is directed to be released forthwith by the respondents if the detenu is not required in any other cases. No orders as to costs.

12. Miscellaneous petitions pending if any, stand closed.

----- JUSTICE D.V.S.S.SOMAYAJULU
_____ JUSTICE V.SRINIVAS Date: 12.05.2023 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.40489 of 2022 DATE: 12.05.2023 krs