

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

WRIT PETITION No.117 of 2023

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

In this writ petition, the petitioner is challenging the order of detention of her mother by name Smt.Talari Bebi, W/o Subhakar Rao(late), aged 56 years, in order of detention vide Roc.No.M1(SEB.korukonda)/448434/2022 dated 05.11.2022 passed by the 2nd respondent-The Collector and District Magistrate, East Godavari District, which was confirmed by the 1st respondent vide G.O.Rt.No.2724, General Administration (SC.I) Department, dated 19.12.2022 and prays to direct the respondent authorities to set the detinue at liberty forthwith.

2. The Collector and District Magistrate, East Godavari District, while categorizing the detinue as a "Bootlegger" within the definition of Section 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 said order of detention came to be confirmed by the Government vide G.O.Rt.No.2724, General Administration (SC.I) Department, dated 19.12.2022 .

3. Heard Sri Siva Prasad Reddy Venati, learned counsel for the petitioner and Sri Syed Khader Mastan, 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 she was allegedly involved in five crimes under Section 7(B) r/w.8(b) and 8(c) of Andhra Pradesh Prohibition Act, 1995 and they can be dealt under general laws. It is also stated that she was already granted bail in those crimes, but the same were not even considered by the authority.

5. 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.19284 of 2022 dated 27.10.2022. The learned counsel for the petitioner further submits that the preventive detention shall not be passed or confirmed in these circumstances.

6. Per contra, the learned Additional Advocate General reiterating the averments made in the counter affidavit filed by the respondents, justifying the order of the District Magistrate as the detenue is a habitual offender and argues that her acts are prejudicial to the public order, that she is a bootlegger who is selling adulterated liquor, the order impugned in the writ petition do not

warrant any interference of this Court under Article 226 of the Constitution of India.

7. 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 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***¹, ***Piyush Kanthilal Mehatha v. Commissioner of Police Ahmadabad City***², ***Malladha K.Sriram v. State of Telangana***³, 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 without subjecting an individual to the procedure of free and fair trial would

¹ AIR 1966 SC 740

² 1989 Supp (1) SCC 322.

³ CrI.A.No.561 of 2022 (Supreme Court of India)

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.

8. In the present case, the detenue was already enlarged on bail even prior to detention order and the said fact is not disputed in the counter. 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.

9. Having regard to the facts of this case, this Court is of considered opinion that the order impugned was made without proper application of mind and there is a serious procedural violation. The detenue will not fall under the category of Section 2(b) 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 detenue is a 'Bootlegger' whose activities would be actually prejudicial to public order.

10. For the reasons recorded, this Writ Petition is allowed in terms thereof, setting aside the order of detention passed by the 2nd

respondent vide proceedings in Roc.No.M1(SEB.korukonda)/448434/2022 dated 05.11.2022 as confirmed by the State Government vide G.O.Rt.No.2724, General Administration (SC.I) Department, dated 19.12.2022. Consequently the detainee namely Smt.Talari Bebi, W/o Subhakar Rao(late), aged 56 years, is directed to be released forthwith by the respondents if the detainee is not required in any other cases. No order as to costs.

11. Miscellaneous petitions pending if any, stand closed.

JUSTICE D.V.S.S.SOMAYAJULU

JUSTICE V.SRINIVAS

Date: 19.04.2023
Pab

Issue C.C. today.

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

WRIT PETITION No.117 of 2023

DATE: .04.2023

Pab