

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND**

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.13561 of 2023

ORDER: *(Per Hon'ble Sri Justice Tarlada Rajasekhar Rao)*

The present Writ Petition for *habeas corpus* is filed under Article 226 of the Constitution of India, praying to declare the impugned detention order dated 02.05.2023 passed by the detaining authority by exercising the power under Section 3(1) and (2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter called 'the Act', for short), as being illegal, arbitrary and unconstitutional and violative of the fundamental rights and to set aside the consequential confirmation order dated 26.06.2023 vide G.O.Rt.No.1248 on the ground that the said detention is in violation of fundamental rights.

2. Heard learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. The petitioner herein is the wife of the detenu-Polisetty Ramu.

4. The present Writ Petition is filed assailing the detention order passed by the 2nd respondent. The detaining authority and the 2nd

respondent passed the present impugned order on the ground that the detenu is a habitual offender in illicit trafficking of ganja and resorting to commit offences without any hesitation for wrongful gain and disturbing peace and public tranquility and spoiling the public order in the vicinity of the villages. His activities are dangerous and detrimental to the public safety and security and he is largely harmful to the society and normal life of the general public. Though the cases were registered and charge sheeted in various police stations, he has not given up his clandestine activities unabated by involving the youth of Bhimavaram by luring them into an offer to pay huge money and he has been spoiling the lives of the youth by addicting them to consuming ganja for his financial benefits which act affects more public order. It is further asserted in the detention order that there are five cases reported and registered against the detenu under the relevant Section of law and as such, that he is a drug offender by illicit trafficking of ganja even by causing harm to the people in the society while committing the offence and his activities are detrimental to public order and he relied on the grounds of detention which are furnished by the sponsoring authority. The crimes registered against the detenu are: (1) Crime No.156 of 2017, (2) Crime No.199 of 2018, (3) Crime No.56 of 2019, (4) Crime No.319 of 2019 and (5) Crime No.4 of 2023. All

the said crimes are registered for the offence punishable under Section 8(c) r/w 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

5. The said detention order is assailed in the present Writ Petition on the grounds that the detaining authority has passed the detention order without applying proper mind to the facts and circumstances mentioned in the grounds of detention and failed to observe no material is supplied to the detaining authority to arrive at just, fair and reasonable grounds and on the other ground that the detenu was granted bail and those bail orders were neither furnished to the detenu nor they were placed before the detaining authority and the detenu was acquitted in two cases, i.e., in Crime No.199 of 2018 and in Crime No.56 of 2019 and the said orders were not furnished or placed before the detaining authority. So, for not furnishing the said acquittal orders, the detenu is not able to make a valid representation under the Act and if the same were placed before the detaining authority, the detaining authority would have taken a different stand and that it amounts to non-application of mind and if at all the detenu violates the conditions in the respective bail orders, the respondents are at liberty to file application for cancellation of bail order and on the above said grounds, it is prayed to set aside the detention order.

6. Learned counsel for the petitioner relied on the judgment of the Apex Court in the case of *Prakash Chandra Yadav @ Mungeri Yadav v. The State of Jharkhand and others*¹ on the proposition that *all laws of preventive detention are necessarily harsh and they curtail personal liberty of an individual, who is kept behind bars without any trial and in such cases, the law must therefore be strictly applied.* Learned counsel for the petitioner also relied on the judgment of a Division Bench of this Court in *K.Padmavathi v. State of Andhra Pradesh*² for the proposition that the bail orders are vital material and if it is not considered, the satisfaction of the detaining authority could be impaired. Learned counsel for the petitioner also relied on the orders of this Court in W.P.No.11645 of 2023 dated 02.08.2023 for the very same proposition and also the orders in W.P.No.3790 of 2023 dated 03.07.2023.

7. In all the above quoted judgments, it was held that the documents on the basis of which the order of detention was made are not supplied to the detenu to enable him to make an effective representation, it undoubtedly makes the impugned order of detention passed against him an illegal order and it is vitiated for non-compliance with the said mandatory requirements of law.

¹ 2023 Live Law (SC) 529

² 2022 SCC Online AP 2531

8. In the present case, it was asserted in the grounds of detention order that the detenu was involved in five cases under the NDPS Act. But, it was not stated how it affects the public order and how it is prejudicial to the maintenance of public order. Mere assertion in the detention order would not be sufficient to detain the detenu without assigning any reasons as to how it affects the maintenance of public order or cause prejudice to the maintenance of public order.

9. The Supreme Court dealing with the grounds for quashing the order of detention in the case of *Abdul Gaffer v. State of West Bengal*³ held that *whether the preventive detention is ordered on the grounds which are already alleged in the subject matter of criminal case, the Court has to see whether certain incident was related to law and order or public order and it has to be remembered by the detaining authority that the Constitutional Courts have time and again repeatedly stated that the detaining authority should be vigilant while passing the detention order.*

10. In *Francis Coralie Mullin v. Union Territory of Delhi and others*⁴ the Apex Court observed at paragraph No.3 that *the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished*

³ (1975) 4 SCC 59

⁴ 1981 AIR SC 746

and prized possession of man in a civilized society, which has power to be exercised with the greatest care and caution and the Courts have to be ever vigilant to see that this power is not abused or misused.

11. With regarding to the procedural safeguards, the Apex Court in *Kamleshkumar Ishwardas Patel v. Union of India and others*⁵ held that *the procedural safeguards are required to be jealously watched and enforced by the Court and their rigour cannot be modulated on the basis of the nature of the activities of the detenu.* The same was observed in the case of *Sarwan Singh Rattan Singh v. State of Punjab*⁶ : "*May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of Preventive Detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenues.*"

12. The distinction has been noticed by this Court in *Powanammal v. State of T.N. and Anr.*⁷, at para 9, it was observed as follows:

⁵ (1995) 4 SCC 51

⁶ (1981) 4 SCC 481

⁷ (1999) 2 SCC 413

"However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention."

13. In *P.U. Abdul Rahiman v. Union of India*⁸, the Apex Court held that the documents relied upon by the detaining authority are vital material for consideration. If they have not been considered, the satisfaction of the detaining authority would itself be impaired and, if they had been considered, they would be documents relied upon by the detaining authority though not specifically mentioned in the annexure to the order of detention, and those ought to have formed part of the documents supplied to the detenu with the grounds of detention. Without them, the grounds themselves cannot be said to have been complete. This amounts to denial of the detenu's right to make an effective representation, and results in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal, and would entitle the detenu to be set at liberty.

14. Reliance was also placed upon *Jaya Mala v. Home Secretary Government of J & K*.⁹ In that case also a criminal case had been started on the basis of an incident. The Court felt that the grounds

⁸ 1991 Supp (2) SCC 274

⁹ (1982) 2 SCC 538

of detention were such grounds upon which no valid order can be sustained. It has been further observed at page 540 as follows:

"But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order. If every infraction of law having a penal sanction by itself is a ground for detention danger looms larger than the normal criminal trials, and criminal courts set up for administering justice will be substituted by detention laws often described as lawless law."

15. In fact, in a recent decision of the Apex Court in the case of *Mallada K. Sri Ram Vs. The State of Telangana & Ors.*¹⁰, it was stated as under:

"It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending

¹⁰ 2022 SCC Online SC 424 = 2022 (6) SCALE 50

before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards."

16. If a person against whom a preventive detention order has been passed comes to Court at the pre execution stage and satisfies the Court that the detention order is clearly illegal, there is no reason why the Court should stay its hands and compel the petitioner to go to jail even though he is bound to be released subsequently (since the detention order was illegal). As already mentioned above, the liberty of a person is a precious fundamental right under Article 21 of the Constitution and should not be likely transgressed.

17. Nowhere in the detention order or in the counter affidavit, it was asserted about the sale of ganja, how it affects the public order and how it is dangerous to public health and the act alleged by itself is not sufficient to hold the act done by the detenu is prejudicial to the maintenance of public order, the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order, as held by the Apex Court in *Ashok Kumar v. Delhi Administrator*¹¹, where a

¹¹ (1982) 2 SCC 403

distinction was made between “law and order” and “public order”, which reads thus:

13. The true distinction between the areas of “public order” and “law and order” lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of “law and order” and “public order” is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case.

18. In view of above, we are inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(1) of the Act.

19. In the result, the present Writ Petition is allowed and the impugned order of detention dated 02.05.2023 passed by the 2nd respondent-detaining authority and consequential confirmation order dated 26.06.2023 are hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in any other case.

20. As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed. There shall be no order as to costs.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TARLADA RAJASEKHAR RAO

Date: 12.09.2023

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