

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

AND

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.19145 of 2023

ORDER:- *(Per Hon'ble Sri Justice Cheekati Manavendranath Roy)*

This writ petition is filed for Habeas Corpus to declare the order of preventive detention dated 30.06.2023 passed by the detaining authority which was approved as per G.O.Rt.No.1322, dated 10.07.2023 and which was confirmed by the State Government of Andhra Pradesh as per G.O.Rt.No.1783, dated 05.09.2023 against the detenu, as illegal, unconstitutional and violative of Articles 14 and 21 of the Constitution of India and the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for short "the Act") and the Rules made thereunder and consequently prayed to set aside the impugned order of preventive detention and the consequential orders passed under the aforesaid G.Os. confirming the said order of preventive detention and to set the detenu at liberty forthwith.

2. The petitioner is the wife of the detenu by name Kancheti Sai Babu @ Sai @ Sai Kumar @ Nalla Sai. Four crimes were registered against him in various police stations as detailed infra:

- i) Cr.No.36/2023, U/sec.120(B), 143, 379, 307, 109 r/w. 149 I.P.C. of Amaravathi Police Station, dated 20.04.2023.
- ii) Cr.No.23/2023, U/sec.34(A) AP Excise Act of Krosuru Police Station, dated 16.04.2023.
- iii) Cr.No.33/2023, U/sec.188, 287, 354(c), 336 r/w. 34 I.P.C. of Atchampet Police Station, dated 14.04.2023.
- iv) Cr.No.35/2023, U/sec.420, 506 I.P.C of Bellamkonda Police Station, dated 03.06.2023.

3. Prior to registration of the aforesaid four crimes, about ten crimes were earlier registered against him, which are also detailed below:

- i) Cr.No.2/1993, U/sec.147, 148, 448, 427, 506 r/w 149 I.P.C. of Krosuru Police Station.
- ii) Cr.No.32/2004, U/sec.147, 148, 307, 353 r/w. 149 I.P.C. of Krosuru Police Station.
- iii) Cr.No.33/2004, U/sec.147, 148, 324, 427 r/w. 149 I.P.C. and Sec.136(f) of RP Act and Sec.3(x) of SC's/ST's (PoA) Act, 1989 and Sec.3 of PDPP Act of Krosuru Police Station.
- iv) Cr.No.20/2013, U/sec.323, 324, 506 r/w. 34 I.P.C. of Krosuru Police Station.
- v) Cr.No.43/2014, U/sec.324 r/w. 34 I.P.C. of Krosuru Police Station.
- vi) Cr.No.106/2021, U/sec.323, 506, 431 r/w. 34 I.P.C. of Atchampet Police Station.
- vii) Cr.No.17/2005, U/sec.143, 427 r/w. 34 I.P.C. of Arundelpet Police Station.
- viii) Cr.No.252/2010, U/sec.147, 148, 427, 452, 307 r/w. 149 I.P.C. of Chilakaluripet Town Police Station.

- ix) Cr.No.253/2010, U/sec.353 r/w. 34 I.P.C. of Chikalaluripet Town Police Station.
- x) Cr.No.5/2019, U/sec.307, 326, 341, 506, 143, 147, 148 r/w. 149 I.P.C. of Pattabhipuram Police Station.

4. In view of the fact that the aforesaid four crimes are pending against him and as ten crimes were earlier registered against him as detailed supra, the sponsoring authority has recommended the detaining authority to pass an order of preventive detention against the detenu on the ground that he comes within the definition of Goonda as defined under Section 2(g) of the Act as he has a habitual offender and his activities are prejudicial to the maintenance of law and order. It is stated that his activities are also dangerous to the maintenance of public order and as he is a habitual offender, to prevent him from committing the similar nature of offences and from indulging in similar illegal activities, that it is essential to pass an order of preventive detention against him.

5. On the basis of the said recommendation made by the recommending authority, the detaining authority has passed the impugned order by preventive detention against the detenu. The said order was subsequently confirmed by the Government by way of issuing the aforesaid G.O.

6. Aggrieved thereby, the wife of the detenu has filed this writ petition challenging the legal validity of the impugned order of preventive detention and sought to set aside the same and to set the detenu at liberty forthwith.

7. Counter has been filed by the 3rd respondent-District Collector, who is the detaining authority, stating that about four crimes are now registered against the detenu at present and on account of registration of the said crimes, he clearly falls within the definition of Goonda as defined under Section 2(g) of the Act and earlier also, about ten crimes were registered against him and the registration of the aforesaid crimes against him clearly show that the detenu is habituated in committing various offences and that he has been indulging in unlawful activities and it amounts to disturbing the public order and as such, it is essential to pass an order of preventive detention against him to prevent him from committing the similar nature of offences in future.

8. Sri Posani Venkateswarlu, learned Senior Counsel for the petitioner, would vehemently contend that out of the four crimes that are now pending against the detenu, one crime in Cr.No.23 of 2023 was registered under Section 34(A) of the A.P. Excise Act in

Krosuru Police Station and it does not fall within the definition of Goonda as defined under Section 2(g) of the Act. He contends that even though on account of registration of the three crimes, the detenu may come within the definition of Goonda under Section 2(g) of the Act, that even if one irrelevant ground is taken as basis for passing an order of preventive detention that by itself is sufficient to set aside the order of preventive detention as per the settled law in this regard. He would submit that the offence under Section 34(A) of the A.P. Excise Act, falls within the definition of Bootlegger under the Act and not under the definition of Goonda. In support of his contention, he relied on the judgment of the Division Bench of this High Court rendered in the case of **Annam Venkatakrishnaraju v. State of Andhra Pradesh and others**¹. He would then contend that in all the other ten crimes that were earlier registered against him, the detenu was acquitted in all the said cases and the said crimes cannot be taken as basis for passing an order of preventive detention and it would also amount to taking an irrelevant ground as a basis for passing the impugned order of preventive detention and it would vitiate the impugned order. In support of his contention, he relied on the Judgment of the Apex Court rendered

¹ 2021 SCC OnLine AP 355

in the case of ***Khaja Bilala Ahmed v. State of Telangana and others***².

9. He would also contend that in Cr.No.36/2023, which was registered for the offences punishable under Sections 120(B), 143, 379, 307, 109 r/w. 149 of I.P.C. of Amaravathi Police Station, the detenu was initially not shown as accused in the said crime and he was shown as accused during the course of investigation and he was arrested and produced before the concerned Magistrate to remand in judicial custody, that the learned Magistrate did not accept his remand and refused to remand him to Judicial custody. So, he would contend that it is clear that he has been falsely implicated in the said crime and it cannot be made as a basis for passing the impugned order of preventive detention. He then vehemently contends that even though the remand of the detenu was not accepted by the Magistrate, still the detaining authority has shown in the impugned order that he was arrested and thereafter released on bail which clearly shows the non-application of mind of the detaining authority to the facts of the case, which also renders the impugned order as an illegal order and it also vitiates the impugned order. Therefore, on the

² (2020) 13 SCC 632

aforesaid grounds, he would pray to set aside the impugned order and to set the detenu at liberty.

10. Learned Government Pleader appearing for the respondents, would contend that the earlier ten crimes, in which the detenu was acquitted, was in fact not made basis for passing the impugned order of preventive detention and he would contend that it is only to show his past history relating to his involvement in unlawful activities, that they are incidentally shown and mentioned in the impugned order and the same was not made basis for passing the impugned order of preventive detention. He would submit that the same is clearly explained in the counter filed by the 3rd respondent. He then contends that even though the detenu was acquitted in the said ten crimes earlier, as per the law laid down by the Constitutional Bench of the Apex Court rendered in the case of **Haradhan Saha and another v. The State of West Bengal and others**³, it is clearly held by the Apex Court that even though the detenu was acquitted earlier in the cases registered against him, that the same can be made basis for passing the impugned order of preventive detention, when it is found that, he is a habitual offender participating in unlawful activities.

³ AIR 1974 SC 2154

11. Learned Government Pleader would vehemently contend that the very fact that the detenu is involved in four crimes at present and that he was involved in ten crimes earlier, clearly show that he is a habitual offender indulging in the acts which are prejudicial to the maintenance of public order and as such, in order to prevent him from committing any such offences in future, that in the interest of the general public, the impugned order of preventive detention is passed and it is perfectly valid under law and thereby prayed for dismissal of the writ petition.

12. We have meticulously considered the aforesaid rival submissions made by both learned Senior Counsel for the petitioner and the learned Government Pleader.

13. The impugned order of preventive detention was passed mainly on the ground that the detenu has been involving in the acts, which are prejudicial to the maintenance of public order and the very fact that four crimes are now pending against him, show that he falls within the definition of Goonda as defined under Section 2(g) of the Act. Goonda is defined in Section 2(g) of the Act and reads thus:

"goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences

punishable under Chapter XVII or Chapter XXII of the Indian Penal Code”.

14. A reading of the definition of Goonda extracted above, clearly shows that it is only when a person habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVII or Chapter XXII of the Indian Penal Code, then only he can be termed as Goonda under the Act. Three crimes i.e. Crime No.36 of 2023, Crime No.33 of 2023 and Crime No.35 of 2023, no doubt pertains to the offences punishable under Chapter XVII and Chapter XXII. So, it attracts the definition of Goonda under the Act. But the other crime i.e. Crime No.23 of 2023 is registered only under Section 34(A) of the A.P. Excise Act. It has nothing to do with the offences under the Indian Penal Code much less the offences under Chapter XVII and XXII of I.P.C. It is only an offence under special enactment under the A.P. Excise Act. So, it does not attract the definition of Goonda under Section 2(g) of the Act. At best, the said crime attracts the definition of Bootlegger as defined under Section 2(b) of the Act. Yet, this Crime No.23 of 2023 is also made basis to pass the impugned order of preventive detention terming the detenu as a Goonda. So, it clearly amounts to taking an irrelevant factor as a ground to pass the impugned order of

preventive detention. When an irrelevant factor or ground is taken as basis for passing the order of preventive detention, as rightly contended by the learned Senior Counsel for the petitioner, as per settled law, it would vitiate the order of preventive detention and the same is liable to be set aside on the sole ground. The legal position in this regard is no more *res nova* and the same has been well settled.

15. The Co-ordinate Division Bench of this High Court has dealt with the issue elaborately with reference to the earlier decided case law on the said legal position. In ***Annam Venkatakrishnaraju case (1 supra)***, the Division Bench of this High Court clearly held that taking an irrelevant ground as the basis for passing the order of detention would vitiate the said order of detention and the same is liable to be set aside on that ground. As per the facts of the case in the said reported Judgment, about 11 crimes were registered against the detenu therein, 10 crimes pertain to the offences which satisfies the definition of Goonda under Section 2(g) of the Act. One crime out of the said 11 crimes, did not fall within the definition of Goonda under Section 2(g) of the Act and it attracts only the definition of the Bootlegger. Therefore, the Court found that taking the said

crime which does not satisfy the definition of Goonda as the basis for passing the impugned order of preventive detention, vitiated the impugned order of preventive detention and thereby has set aside the same. In the said Judgment, the Division Bench has relied on the earlier judgment rendered by the Division Bench in the case of ***S.Prasad Reddy v. Collector and District Magistrate, Anantapur***⁴ and also the other judgment rendered in the case of ***Thallapuneni Venkateswarlu v. Collector and District Magistrate, Cuddapah***⁵, wherein it is held that the crime which do not satisfy the definition of Goonda, cannot be made basis for passing the order of preventive detention on the ground that the detenu is a Goonda under the Act.

16. The ratio laid down in the aforesaid judgments squarely applies to the present facts of the case. In the instant case also, one crime which do not attract the definition of Goonda as detailed supra, was made basis for the purpose of passing the impugned order of preventive detention terming the detenu as a Goonda. Undoubtedly, an irrelevant ground is made as basis for passing the impugned order of preventive detention. So, as per the law laid down in the aforesaid judgments, that by itself vitiates

⁴ (2005) 3 ALT 487

⁵ (2004) 5 ALT 250

the impugned order of preventive detention and the same is liable to be set aside on the sole ground.

17. Further, apart from the aforesaid four crimes which are now pending against the detenu, ten other crimes which were earlier registered long back against the detenu and that too the cases in which he was acquitted in all the said crimes, were also made basis for passing the impugned order of preventive detention. When the detenu was acquitted in all the said ten crimes, according to the learned Senior Counsel for the petitioner, the same cannot be based upon for passing the impugned order of preventive detention. As noticed supra, he draws support in this regard from the Judgment of the Apex Court rendered in ***Khaja Bilala Ahmed case (2 supra)***, it was held at para No.23 of the said judgment as follows:

“.....The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority **must not be based on irrelevant or invalid grounds**. It must be arrived at on the basis of relevant material; material which is not stale

and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual.”

Further held as follows:

“However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention.”

18. Therefore, these past ten crimes registered long back from the year 1993 onwards in which the detenu was acquitted in all the said crimes do not provide a live link with the present crimes for making the same as basis for passing the impugned order of preventive detention. They are undoubtedly stale incidents and do not provide a live link for passing the impugned order of preventive detention.

19. Although, as per the judgment relied on by the learned Government Pleader that even after the accused was acquitted in the crimes, that the same can be considered, still it must be shown that it provides a live link with the present crimes for the purpose of making it as basis for passing the order of preventive detention. The same is miserably missing in this case. Although, learned Government Pleader has contended that the said ten crimes in which he was acquitted, are not in fact made as basis for passing the impugned order of preventive detention, the said

contention cannot be countenanced. A careful perusal of the order of preventive detention clearly shows that the detaining authority has in fact made the said ten crimes also as basis to hold him as a habitual offender and to pass the order of preventive detention. Mere explaining in the counter that it was only incidentally mentioned to show his past history by itself will not make the order of preventive detention a valid one, when it clearly shows that the detaining authority has in fact made the same as basis for passing the impugned order of preventive detention. Therefore, on the said ground also, the impugned order is vitiated and it is liable to be set aside.

20. Apart from it, in Crime No.36 of 2023, as noticed supra, the detenu was not initially an accused in the said crime when it was registered and he was subsequently shown as an accused during the course of investigation. After his arrest, when he was produced before the concerned Magistrate for remand, the learned Magistrate did not accept his remand. Yet, the detaining authority has stated in the impugned order that he was arrested in the said crime also and was released on bail. The said finding runs contrary to the record. It clearly shows the non-application of mind of the detaining authority in recording his subjective satisfaction for passing the impugned order.

21. Therefore, for the aforesaid reasons, the impugned order is badly vitiated and it is liable to be set aside.

22. Resultantly, the Writ Petition is allowed setting aside the impugned order of preventive detention, dated 30.06.2023, passed against the detenu, who is the husband of the petitioner by name Kancheti Sai Babu @ Sai @ Sai Kumar @ Nalla Sai and the consequential G.O.Rt.No.1322, dated 10.07.2023 and G.O.Rt.No.1783, dated 05.09.2023 that were issued for approval and confirmation of the said order. The detenu by name Kancheti Sai Babu @ Sai @ Sai Kumar @ Nalla Sai shall be set at liberty forthwith, if not required in any other case. There shall be no order as to costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TARLADA RAJASEKHAR RAO

Date: 04.10.2023

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