

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

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.19727 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 14.06.2023 passed by the detaining authority by exercising the power under Section 3(1) & (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), and the consequential confirmation order passed by the 1st respondent, vide G.O.Rt.No.1639 dated 14.08.2023, as being illegal and unconstitutional and consequently, to set the detenu-Biyyala Appalanaidu at liberty forthwith.

2. Heard learned counsel for the petitioner and Sri Syed Khadir Masthan, learned Assistant Government Pleader attached to the office of the learned Additional Advocate General, appearing for the respondents.

3. The petitioner herein is the wife of the detenu-Biyyala Appalanaidu. The 2nd respondent-Collector and District Magistrate has passed the detention order detaining the detenu on the ground

that the detenu has been committing offences in contravention of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and he was arrested in 7 cases and he indulged in commission of offences of purchase, possession, sale and transportation of ganja, which causes damage to the public health as well as public peace and tranquility and it comes under the category of 'drug offender' as envisaged under Section 2(f) of the Act. Hence, on the above said grounds, the detention order was passed by the 2nd respondent by exercising power under Section 3(1)&(2) of the Act.

4. The detenu was involved in the following crimes:

- (1) Crime No.17 of 2015 under Section 20(b), 25 of the NDPS Act of Rolugunta Police Station.
- (2) Crime No.06 of 2018 under Section 8(c) r/w 20(b)(ii)(C), 25 of the NDPS Act of Ravikamatham Police Station.
- (3) Crime No.07 of 2018 under Section 8(c) r/w 20(b)(ii)(c), 25 of the NDPS Act of Kothakota Police Station.
- (4) Crime No.199 of 2019 under Section 20(b) of the NDPS Act of Kothakota Police Station.
- (5) Crime No.82 of 2021 under Section 20(b)(ii)(c) of the NDPS Act of Ravikamatham Police Station.
- (6) Crime No.82 of 2021 under Section 20(b)(ii)(c) r/w 8(c) of the NDPS Act of Rolugunta Police Station.
- (7) Crime No.57 of 2023 under Section 20(b)(ii)(c) r/w 8(c) of the NDPS Act of Rolugunta Police Station.

5. Learned counsel for the petitioner would submit that the detention order is bad under law, as it was passed in mechanical manner and the sponsoring authority deliberately suppressed the information relating to the grant of bail before the detaining authority and the concerned authority did not furnish bail orders and there is no need of passing the detention order as the detenu is already in judicial custody and there is no reason assigned that the detenu in all probability would be released on bail and absolutely there is no necessity to pass the detention order against the detenu, who is already in judicial custody.

6. Repelling the contentions raised by the petitioner herein, learned counsel for the respondents would submit that the order of the detention is passed in accordance with law and subject to the satisfaction of the 2nd respondent-the Collector and District Magistrate and the material has been furnished to the detenu while he was in judicial custody. He relied on the judgment of the Apex Court in *Sunila Jain v. Union of India and another*¹. In the said judgment, the Apex Court observed to decide *whether the bail order is a vital document, it has to see whether the nature of offence bailable or not and the other is the nature of restrictions imposed while granting bail. If offence alleged against the detenu is bailable,*

¹ (2006) 3 SCC 321

and if there are no restrictions or conditions imposed while granting bail, except for the condition of executing bond and furnishing surety, the order granting bail may not be a vital document as it may not affect the subjective satisfaction of the detaining authority. In case of bailable offence, while granting bail, if a condition is imposed to ensure that the detenu does not flee from justice, such order will certainly become a vital document looking to the nature of condition.

7. In the present case, the orders granting conditional/non-conditional bail were neither considered by the detaining authority nor were copies thereof furnished to the detenu. If these conditional orders of bail had been brought to his notice, it may well have resulted in the detaining authority arriving at the subjective satisfaction that the detention of the detenu were unnecessary. Therefore the reliance placed by the learned counsel for the respondents on *Sunila Jain's* case (1 supra) is, therefore, misconceived.

8. A perusal of the detention order do not indicate that the present detention order was passed considering the need of the detenu being detained in jail while he was in judicial custody and no reasons were assigned for such detention. It appears from the detention order that the detaining authority has not considered the bails granted to the detenu and nowhere it was indicated either in

the detention order or in the grounds of the detention order before exercising the jurisdiction under Section 3(1)&(2) of the Act.

9. Considering the submissions made by both the learned counsel, the question that arises for consideration in this Writ Petition is, whether the order of detention and the consequential confirmation order are sustainable or not and whether they are liable to be set aside or not?

10. It is apt to consider the judgment of the Apex Court in *Biru Mahato vs. District Magistrate, Dhanbad*². In the said judgment, the Apex Court has gone to the extent of holding:- "*Where a preventive order is to be made against a person already confined to jail or detained, the subjective satisfaction of the detaining authority must comprehend his awareness of the very fact that the person sought to be detained is already under confinement in respect of the same offence and yet a preventive detention is a compelling necessity. If the subjective satisfaction is reached, without the awareness of this very relevant fact, the detention order is likely to be vitiated.*"

11. In *Binod Singh vs. District Magistrate, Dhanbad, Bihar and others*³, the Apex Court held as under :-

"Where the order of detention under S. 3(2) was served upon the detenu, when he was already in jail in respect of a

² (1982) 3 SCC 322

³ (1986) 4 SCC 416

murder case and there was no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order of detention, the continued detention of the detenu under the Act would not be justified. The power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defense. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. And if that is the position, then, however, disreputable the antecedents of a person might have been without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody."

12. In the case of *Abdal Razak Abdul Wahab Sheikh v. Shri S.N. Sinha*⁴, also the detenu was already in jail at the time the detention order was passed. The bail application moved by the detenu had already been rejected. It was held by the Supreme Court that the principle that emerges is that there must be awareness in the mind of the detaining authority that the detenu is in custody at the time

⁴ (1989) 2 SCC 222

of service of order of detention on him cogent relevant material and facts have been disclosed which necessitate the making of an order of detention.

13. A detention order can be passed against a person who is in detention or in jail but the detention order or the grounds of detention served on the detenu must show that the detaining authority is aware of the fact that the person against whom the detention order is being passed is already in jail, and if still the detaining authority finds it necessary to pass the order of detention there has to be material before the detaining authority to reach the satisfaction. In arriving at the satisfaction an important factor would be antecedent history and the past conduct of the detenu. It would, naturally, depend on the facts and circumstances of each case whether a detention order should or should not be made in the case of a person who is already in jail.

14. The detention order do not indicate that detaining authority finds it necessary to pass the order of detention on the ground that there is every possibility of detenu be released on bail against whom the detention order is being passed is already in jail and no reason has been assigned to the said affect cogent relevant material and facts have been disclosed which necessitate for making of an order of detention. The detention order would indicate that that the

detenu was habitual offender and he is in possession and selling of ganja which is contraband under the NDPS Act and he has committed several bodily and property offences under chapter XVI & XVII of I.P.C. and the detention order did not indicate that that the requirement of detenu for detention who is already in judicial custody. These factors are conspicuously missing in the impugned orders. Therefore, the impugned detention order and the consequential confirmation order are liable to be set aside.

15. In the result, the present Writ Petition is allowed and the impugned detention order dated 14.06.2023 and the consequential confirmation order, vide G.O.Rt.No.1639 dated 14.08.2023, are hereby set aside. The respondents are hereby directed to set the detenu at liberty forthwith, if he is not required in any other case.

16. 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: 15.09.2023

siva

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HON'BLE SRI JUSTICE TARLADA RAJASEKHARA RAO

WRIT PETITION No.19727 of 2023

Date: 15.09.2023

siva