

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

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.20722 of 2023

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

The present Writ of habeas corpus was filed to set at liberty the detenu by annulling the detention order dated 24.07.2023 and by setting aside the consequential approval order issued vide G.O.Rt.No.1505 dated 10.07.2023.

2. The present Writ Petition is filed by the son of detenu.
3. The detention order dated 24.07.2023 was passed by the 2nd respondent exercising the power conferred under Section 3(1) and (2) of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter called 'the Act'), on the recommendation of the 3rd respondent-sponsoring authority.
4. Heard learned counsel for the petitioner and learned Assistant Government Pleader representing Additional Advocate General.

5. The present detention order was passed as the detenu was involved in Crime Nos. (1)147 of 2017, (2) 127 of 2019 and (3) 2 of 2023. The above said crimes were registered under Section 20 (b) (ii) (A) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter refer as NDPS Act). Though the detenu was booked in several cases, still he is indulging in selling ganja in neighbouring limits and spoiling the public peace and tranquility in the vicinity and he is not a licensee or holder of any permit to deal in any kind of drugs under the provisions of NDPS Act and the said ganja is prohibited drug defined under Section 8 sub-section (C) of the NDPS Act. No person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import interstate, export interstate, import into India, export from India or transport any Narcotic Drug or Psychotropic Substance.

6. Further, it is alluded in the detention order that the execution of the Criminal Prosecution launched against the detenu will take a long time to prosecute the detenu. Hence, it is not possible to prevent him immediately from indulging in similar activities which affects public health and order

and his activities got adverse effect in the community, creating a feeling of insecurity, danger to life and to public health in the locality, therefore, the detention order came to be passed.

7. Assailing the said order, the present Writ Petition came to be filed to direct the respondents herein to release the detenu on the grounds that the detenu was granted bail in all the above three referred crimes and the said bail orders were not placed, if the same were filed before the detaining authority, which persuade him to take a different stand and not placing the said bail orders is contrary to law as laid down by this Court and the Apex Court in plethora of judgments and if the same are been placed before the detaining authority, the detaining authority would have desisted to pass the present detention order.

8. Hence, learned counsel for the petitioner. He relied on the orders of this Court in W.P. No.5469 of 2022 dated 11.07.2022 and order in W.P. No.15360 of 2022 dated 21.09.2022 and also order in W.P.No.6158 of 2023 dated 18.08.2023. In the above said referred orders, this Court

held that non supply of bail application or bail orders to the detenu and failure to place the same before the detaining authority would certainly vitiate the detention order. While passing the order, this Court has relied on the judgment of the Apex Court in *M. Ahamedkutty v. Union of India and another*¹, which reads thus:

It is imperative that under Section 37 of NDPS Act a bar is interposed from granting bail and the bar will not apply when the complainant does not make out a primaface case for the applicability of the provisions of the Act. A careful perusal of the said provision would show that the power and jurisdiction of the court considering the application for grant of bail under the provisions of the NDPS Act, is circumscribed by the provision to the Section 37 of the NDPS Act.

9. The limitation under Section 37 is an addition to those prescribed under the CRPC or any other law in force on the grant of bail. Where, a bail can be considered and granted only in a case where there are reasonable grounds for believing by the Court that the accused is not guilty of such offence and that is not likely to commit any offence while on

¹ (1990) 2 SCC 1

bail. The above said statutory requirements are mandatory to be complied with while releasing the accused on bail.

10. The Supreme Court in the matter of *Union of India and another v. Sanjeev V. Deshpande*², *Union of India v. Rattan Mallik*³ has explained the true import of Section 37 of the NDPS Act. As per the judgment of the Apex Court in the above referred case (i) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The conditions are cumulative and not alternative.

11. The satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”. The expression “reasonable grounds” has been defined recently in *State of Kerala and others v. Rajesh and others*⁴. The Apex Court in the said judgment followed the principles of law laid down in *Union of India v. Ram Samujh and another*⁵ and clearly held that Section 37 of the NDPS Act

² (2014) 13 SCC 1

³ (2009) 2 SCC 624

⁴ (2020) 12 SCC 122

⁵ (1999) 9 SCC 429

commences with non-obstante clause and the conditions enumerated in Section 37 (1)(b) have to be complied before admitting the accused on bail of the aforesaid offence under the Act in case of commercial quantity. Their Lordships explained the meaning of “reasonable grounds” in paragraph 21.

“21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

12. As seen from the above quoted judgments unless there are *prima facie* grounds, no bail can be granted in the case under NDPS Act as there is a bar under Section 37 of the Act.

13. As per the above judgments, it indicates that when a bail is granted to the accused in the NDPS Act despite Section 37 that it is imperative that the Court has to satisfy that there are reasonable grounds for believing the accused is not guilty of the alleged offence and that the accused is not likely to commit any offence on bail. When the Court has granted bail means, that there are reasonable grounds for believing *prima facie* that the accused is not guilty of the alleged offence and the very purpose of placing the bail orders is to consider whether the detenu has committed any such offences or not. The bail orders were not placed before the detaining authority, as such the detaining authority has no opportunity to consider the same as the bail orders have not been placed before the detaining authority. If the same were placed before the detaining authority, the detaining authority would have been taken a different stand or would have desisted from passing the detention order. Hence, for failure to place the bail orders would certainly vitiates the detention order.

14. Accordingly, the detention order dated 24.07.2023 and the approval order dated 10.07.2023, passed by the

respondents are liable to be set aside and they are set aside and the respondents are hereby directed to set the detenu at liberty forthwith, if he is not required in any other case.

15. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

As a sequel, interlocutory applications, if any pending in this Writ Petition shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TARLADA RAJASEKHAR RAO

Date: 04.09.2023
Harin

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22

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