
(2009) 10 AP CK 0050
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14092 of 2009

E. Ratnam

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2, 3(1), 3(2)

Citation : (2010) 1 ALD(Cri) 104 : (2010) 1 ALT 160 : (2010) 1 ALT(Cri) 319

Hon'ble Judges : R. Kantha Rao, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : K.S. Murthy, for the Appellant; Asst. Government Pleader for A.G. for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard Sri K.S. Murthy, learned Counsel appearing for the petitioner, as well as the learned Assistant Government Pleader, representing the learned Advocate General, appearing for the respondents.

2. This Writ of Habeas Corpus is filed by the petitioner seeking production of his grand-son viz., Sri Singavarapu Manikanta Kumar, s/o. Veerabhadra Rao, aged about 21 years, resident of Payakarao Peta, Payakarao Peta Mandal, Visakhapatnam District, who is detained in Central Prison, Rajahmundry, pursuant to the impugned order of detention, dated 12.4.2009, in proceedings Ref. No. C1(M)/257/2009, passed by the 2nd respondent-Collector and District Magistrate, East Godavari, Kakinada, and as confirmed in G.O.Rt. No. 2090, General Administration (Law & Order. II) Department, dated 4.5.2009, passed by the 1st respondent-Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, before this Court and to release him, forthwith.

3. The grand-son of the petitioner was allegedly involved in trafficking of illicit liquor and taking into account of his frequent involvement in the said activity, the

competent authority i.e., the Collector and District Magistrate, East Godavari District, the 2nd respondent herein, exercising the jurisdiction conferred u/s 3(1) and (2) read with Section 2(a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas and Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity "the Act") passed the impugned order of detention, dated 12.4.2009, and eventually the Government had passed final order vide G.O.Rt. No. 2090, dated 4.5.2009, confirming the order passed by the competent authority, and as a result of which the detenu was directed to be detained for a period of 12 (twelve) months from the date of his detention i.e., 13.4.2009. Aggrieved by the same, the petitioner has filed the present writ petition seeking production of the detenu and to release him, forthwith.

4. From a perusal of the impugned order dated 12.4.2009, it appears that while giving the history and introduction of the detenu, the 2nd respondent, who is the competent authority, had referred two instances in which the detenu had been involved viz., (1) Crime No. 349/2007-08, dt. 23.2.2008 and (2) Crime No. 314/2008-09, dated 23.11.2008 of Prohibition and Excise Station, Tuni. Both are related to Excise offences. Then, coming to the grounds of detention, the 2nd respondent had relied on three instances viz., (1) Crime No. 315/2008-09, dated 24.11.2008, (2) Crime No. 427/2008-09, dated 9.2.2009, and (3) Crime No. 536/2008-09, dated 31.3.2009, wherein the detenu was found in possession of huge quantities of illicitly distilled liquor, which was found to be unfit for human consumption and disturbing the public order. The 2nd respondent also made certain remarks touching upon the conduct of the detenu owing to the other situations existing at the relevant point of time.

5. Sri K.S. Murthy, learned Counsel appearing for the petitioner raised three contentions firstly; the previous history relating to the conduct or involvement of the detenu in such offences ought not have been relied on at all, secondly; in all the three cases, which were actually relied on for passing the impugned order of detention, the detenu was recently acquitted. The situation even on the date of passing the impugned order was that there was every possibility or likelihood of the detenu being released on bail and, therefore, it is not proper for the detaining authority to pass an order like the present nature; and thirdly; in the order of detention, the competent authority ought not have made remarks about the conduct of the detenu, like receiving of several oral complaints and in view of the ensuing general elections to Lok Sabha and Assembly, there is every likelihood of increase in the clandestine activities of the detenu affecting the community and creating a sense of insecurity among the public. It is his further contention that the conduct of the competent authority in such circumstances would only show that he was bent upon to see that some how the detenu is in prison for 12 continuous months regardless of every likelihood of he being either released on bail or getting an order of acquittal from the said offences. Therefore, the conduct on the part of the competent authority is prejudicial to the interest of the detenu and on that score also the impugned order of detention

is liable to be set aside.

6. It is also the contention of the learned Counsel appearing for the petitioner that the comments passed by the competent authority against the detenu are absolutely not relevant or essential. This again shows the strong determination of the competent authority to see that somehow or the other the detenu is in prison. In other words, these sweeping remarks were made only to strengthen his views and to strengthen the grounds for detention.

7. On the other hand, learned Assistant Government Pleader contends that the remark passed by the competent authority are only passing remarks and they are not capable of vitiating the order of detention and that the mentioning of previous history of the detenu, even though not relevant, cannot be treated as totally irrelevant. Further that as per the decision rendered by the apex Court, mere acquittal of the detenu does not make the competent authority ineffective in passing the order of detention, if the situation so warrants.

8. In *Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others*, relied upon by the learned Counsel appearing for the petitioner, the apex Court observed as under:

...This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be ipse dixit of the officer passing the order of detention....

Eventually, the apex Court observed that-

The emphasis however, in *Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others*, that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

9. From the above what appears is that it may be necessary for the detaining authority only to consider the material for the purpose of detention and the likelihood of moving only a bail application, but not the order of bail. In view of the above observations of the apex Court, we are of the view that the satisfaction of the competent authority, in this regard, is to be tested upon the reasons to be assigned by the competent authority in the order of detention.

10. Learned Counsel appearing for the petitioner also relied upon another decision rendered by the apex Court in *Dharmendra Suganchand Chelawat and another Vs. Union of India and others*, .

11. The question that had fallen for consideration in the said case was whether there should be compelling reasons for passing the order of detention of the detenus although they were in custody. It was argued by the Attorney General

that notwithstanding the custody of the detenus, the competent authority can pass the order of detention. However, that contention was not fully accepted by the apex Court in view of the facts and circumstances in the said case.

12. In the said case, the question that had fallen for consideration was as to whether the competent authority can extend the order of remand beyond the date prescribed in the original order of detention. In the facts and circumstances of the said case, it was observed by the apex Court that the same was not possible. Therefore, it is to be noted that the original order of detention was not interfered with by the apex Court.

13. In the instant case, such a situation does not exist, inasmuch as, it is only the original order of detention that is under challenge. Therefore, the decision rendered by the apex Court in Dharmendra Suganchand Chelawat's case (2 supra) cannot be made applicable to the facts and circumstances of the present case.

14. It is pertinent to note here the observations made by the apex Court in Haradhan Saha Vs. The State of West Bengal and Others, in para-32, which are as under:

The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

(emphasis supplied by us)

15. In view of the said observations, the contention of the learned Counsel appearing for the petitioner that when there is likelihood of granting bail or acquittal, no order of detention, like the present one, can be passed cannot be countenanced.

16. Regarding the contention that the detaining authority had recorded the previous history of the detenu and the reasons assigned in the order of detention are extraneous and sweeping are concerned, it is to be seen that mentioning of previous history of the detenu regarding his involvement on earlier occasions is only to show the prima-facie satisfaction of the competent authority about the involvement of the detenu in the trade of illicitly distilled liquor.

17. What is to be noted in this regard is that those two instances are not made the basis for passing the impugned order of detention. Independent grounds, which are three in number, have been cited separately under the head

"GROUNDS". Therefore, it is obvious that separate and independent grounds have been placed on record for passing the order of detention, besides placing reliance about the involvement of the detenu on the earlier events.

18. Some times, the competent authority, while recording his satisfaction and assigning the reasons, may have to make certain passing remarks or cite certain instances. Recording of such events or instances, so long as they are not made the basis for passing the order of detention, have to be treated only as passing remarks and such passing remarks cannot vitiate the proceedings of the competent authority nor can be taken advantage of by the detenu. In other words, these type of hyper technicalities shall not defeat the object of prevention of illegal activities under the Act.

19. As already observed by the apex Court, the action of the competent authority is preventive, but not punitive in nature. The standards of trial by the competent Court and by the competent authority for the purpose of passing the order of detention under the Act are different.

20. Further, learned Counsel appearing for the petitioner has brought to the notice of this Court certain other remarks, which, in his opinion, are absolutely not relevant. For instance, the competent authority has noted that there were several complaints received against the detenu about the illegal activities causing widespread danger to the public health and creating a feeling of insecurity among the general public in that locality. It was pointed out that these type of illegal activities are leading to several liquor tragedies costing many lives of poor people and thereby affects the public order. It was further pointed out that in the ensuing general elections to Lok Sabha and Assembly, there is every likelihood of increase in the clandestine activities of the detenu causing wide spread hazard to the public health, therefore, it was opined by the competent authority that such activities of the detenu were affecting the community and creating a sense of insecurity and danger to the lives and health of the public.

21. In our considered view, the above observations made by the competent authority while passing the impugned order of detention should be understood as only the reasons attached to the main order of detention. Primarily, what is to be seen is the continuous or incessant involvement of the detenu in particular kind of activities that are prohibited by the Statute which cause public disorder as well as injury to the public health and in that context the order of detention would be passed and that by itself may not be sufficient to sustain the order of detention. The satisfaction of the competent authority and the reasons for such satisfaction also are essential to be put on record, failure of which renders the impugned order of detention vitiated on the ground of non-application of mind or passing the impugned order in a mechanical manner or may be due to extraneous reasons. Therefore, it is essential for the competent authority to put on record the reasons for such satisfaction before passing the order of detention in order to justify the same when it is subjected to judicial scrutiny.

22. Having regard to the facts and circumstances, particularly in the light of the judicial pronouncement of the apex Court, we do not find any illegality or irregularity in the impugned order of detention passed by the 2nd respondent and the consequential order passed by the 1st respondent confirming the said order of detention. Therefore, the writ petition is liable to be dismissed as devoid of merits.

23. In the result, the writ petition is dismissed, at the stage of admission. No order as to costs.