
(2016) 03 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30688 of 2015

Muppidi Swapna

APPELLANT

Vs

State of Telangana and others

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2016) 4 ALT 520 : (2016) 2 AndhLDCriminal 310

Hon'ble Judges : C.V. Nagarjuna Reddy and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Mr. A. Prabhakar Rao, Counsel, for the Appellant; G.P. for Home (TS), for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—The wife of the detenu under order in Rc. No. 164/2015/P &E/MBD/B2, dated 29.6.2015 of respondent No. 2 filed this writ petition for issuance of a writ of habeas corpus to produce the detenu and set him at liberty, by declaring the order in G.O. Rt. No. 2326, General Administration (Law & Order) Department, dated 22.8.2015 of respondent No. 1 whereby it has confirmed the detention order of respondent No. 2, as illegal.

Background Facts

2. The detenu is a resident of Narsampet Village and Mandal, Warangal District. He is accused in as many as seven criminal cases, all registered for the offence under Section 7(A) read with Section 8(e) of the Andhra Pradesh Prohibition Act, 1995 (for short, "the Prohibition Act"). The gravamen of the charge against the detenu in all these cases is that he is engaged in the activity of a bootlegger, as defined under Section 2(b) of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "the PD Act"). Based on the information placed before him, respondent No. 2 has passed order dated 29.6.2015, in

exercise of the powers under Section 3(1) and (2) of the PD Act ordering detention of the detenu. The said order along with the grounds of detention was served on the detenu informing him that he can make a representation before the Advisory Board constituted for this purpose and the same was approved by respondent No. 1 vide G.O. Rt. No. 1885 General Administration (Law & Order) Department, dated 8.7.2015. The detenu has submitted his representation before the said Advisory Board constituted under the PD Act which has reviewed the case on 31.7.2015 and forwarded its opinion dated 01.8.2015 to respondent No. 1 to the effect that there is sufficient cause for the detention of the detenu. Following the said advise, respondent No. 1 has confirmed the detention order passed by respondent No. 2 and directed the detention of the detenu for a period of twelve months from the date of his detention, i.e., 29.6.2015. Feeling aggrieved by these orders, the wife of the detenu filed this writ petition.

3. Smt. Vakati Karuna, the Collector and District Magistrate, Warangal District, filed a detailed counter affidavit. It is inter alia stated in the counter affidavit that the detenu has been indulging in clandestine movement and possession, sale and transport of Illicitly Distilled Liquor (ID liquor), and transportation, possession and sale of the main ingredients to prepare the ID liquor, such as black jaggery, alum, and he is the kingpin of this line of clandestine business being carried on in contravention of the Prohibition Act and the A.P. Excise Act, 1968 (for short, "the Excise Act"). That in connection with the detenu's illegal activities, the following cases were registered against him.

1. "COR No. 404/2013-14, dated 4.7.2013 U/sec. 7(A) r/w 8(e) A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District.
2. COR No. 408/2013-14, dated 4.7.2013 U/sec.7(A) r/w 8(e) of A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District.
3. COR No. 693/2013-14 dated 24.8.2013 U/sec.7(A) r/w 8(e) of A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District.
4. COR No. 1383/2013-14, dated 18.2.2014 U/sec 7(A) r/w 8(e) of A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District.
5. COR No. 1405/2013-14, dated 2.2.2014 U/sec.7(A) r/w 8(e) of A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District.
6. COR. No. 277/2014-15, dated 31.5.2014 U/sec.7(A) r/w 8(e) of A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District.
7. COR. No. 1369/2014-15, dated 19.1.2015 U/sec.7(A) r/w 8(e) of A.P. Prohibition Act, 1995 of Prohibition and Excise Station, Narasampet of Warangal District."

It is further pleaded that as the registration of the cases is not deterring the

detenu from indulging in unlawful activities affecting public order, invocation of the provisions of the PD Act was necessitated. It is further averred that in spite of registration of the crimes and his arrest, the detenu after coming out on bail has been habitually committing similar such offences which are prejudicial to the maintenance of the public order and that it is the duty of the enforcing Government agency to keep such persons under stringent check by invoking the PD Act, failing which they are likely to indulge in similar activities, which are detrimental to public order. It is further pleaded that the samples seized from the detenu in connection with all the criminal cases were found as "illicitly distilled liquor and unfit for human consumption and injurious to health."

Submissions of The Counsel

4. Mr. A. Prabhakara Rao, learned counsel for the detenu, contended as under.

(i) That the detenu was subjected to ordinary criminal law set in motion with registration of as many as seven criminal cases in which conditional bails have been granted and that therefore there was absolutely no necessity for invoking the provisions of the PD Act; and

(ii) That the detaining authority has referred to and relied upon the bail orders in the criminal cases against the detenu, but the same were not furnished to him, thereby the whole detention order is rendered invalid. In support of his submissions, he has relied upon the judgments in *M. Ahamedkutty v. Union of India* and another, (1990) 2 SCC 1; *Maitreyee Banerjee v. Prabir Kumar Mukherjee*, (1982) 3 SCC 216; *Ichchu Devi Choraria v. Union of India and others*, (1980) 4 SCC 531; *S. Sattu v. Government of Andhra Pradesh*, 2013 (3) ALT (Crl.) 303 (DB)(AP); *Rushikesh Tanaji Bhoite v. State of Maharashtra and others*, (2012) 2 SCC 72; *State of U.P. v. Kamal Kishore Saini*, (1988) 1 SCC 287 and *Sunila Jain v. Union of India and another*, (2006) 3 SCC 321.

5. Opposing the above submissions, the learned Government Pleader for Home (TS) submitted that as stated in the detention order as well as in the grounds of detention order, under the ordinary criminal law the Police were unable to prevent the detenu from indulging in the illegal activities seriously affecting the public order and therefore respondent No. 2 felt it imperative to invoke the provisions of the PD Act for detaining the detenu. That the nature of the detention under the PD Act is different from the punitive detention under the ordinary law and that wherever punitive detention is proved ineffective, preventive detention is resorted to. In support of his submissions, the learned Government Pleader has relied upon the Constitution Bench judgment of the Supreme Court in *Haradhan Saha v. The State of West Bengal and others*, (1975) 3 SCC 198. Countering the submissions of the learned counsel for the detenu that non-supply of bail orders vitiated the detention order, the learned Government Pleader drew a distinction between "reference to" and "reliance on" the material in the detention order and submitted that unless the detention order is passed placing reliance on the material, mere reference thereto will not vitiate

the detention order, even if such material is not supplied to the detenu. He has further submitted that the Court will not set aside the detention order in every case of non-supply of material unless it is satisfied that such non-supply caused prejudice to the detenu. In support of these submissions, he has relied on the judgments in *Vinod K. Chawla v. Union of India and others*, (2006) 7 SCC 337, *State of Tamil Nadu and another v. Abdullah Kadher Batcha and another*, (2009) 1 SCC 333 and *J. Abdul Hakeem v. State of Tamil Nadu and others*, (2005) 7 SCC 70.

Discussion And Findings

6. We have carefully considered the respective submissions of the learned counsel for the parties.

A Constitution Bench of the Supreme Court in *Haradhan Saha* (8 supra) has succinctly explained the scope and concept of preventive detention vis-a-vis the constitutional rights guaranteed under Article 22 of the Constitution of India, and the distinction between preventive detention and punitive detention, in paragraphs 31 and 32 of the judgment as under:

"31. Article 22 which provides for preventive detention lays down substantive limitations as well as procedural safeguards. The principles of natural justice insofar as they are compatible with detention laws find place in Article 22 itself and also in the Act. Even if Article 19 be examined in regard to preventive detention, it does not increase the content of reasonableness required to be observed in respect of orders of preventive detention. The procedure in the Act provides for fair consideration to the representation. Whether in a particular case, a detenu has not been afforded an opportunity of making a representation or whether the detaining authority is abusing the powers of detention can be brought before the court of law.

32. 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."

7. In *G. Reddaiah v. Government of Andhra Pradesh*, (2012) 2 SCC 389 the Supreme Court held that once the detaining authority is subjectively satisfied about the various offences labelled against the detenu, his habitual nature in continuing the same and that it is difficult to control him under the normal circumstances, he is free to pass appropriate orders under the PD Act by fulfilling the conditions stated therein.

In the light of the settled legal position as reflected from the above noted judgments, we do not find any merit in the submission of the learned counsel for the detenu that in view of the pendency of the criminal cases under the Prohibition Act and the Excise Act, invocation of the provisions of the PD Act is not sustainable. From a reading of the impugned detention order passed by respondent No. 2, it is evident that based on the material placed before him in general and the fact that as many as seven criminal cases, the details of which were given above in brief, are instituted against the detenu, respondent No. 2 has arrived at the subjective satisfaction that the detenu is continuing to carry on his illegal activities, despite the registration of criminal cases and his arrest, after he is released on bail and that the department is unable to prevent him from further indulging in the dangerous activities, obviously which are adversely affecting public health and public order.

The fact that the detenu is accused in as many as seven cases pertaining to the activity of bootlegging is not in dispute. Respondent No. 2 has referred to all the seven cases and the nature of the charges made against the detenu in those cases. He has also referred to the fact that in all those cases, the detenu has secured his release through bail orders and was repeating his activities after his coming out on bail. Thus, based on the relevant material placed before him, respondent No. 2 has arrived at the satisfaction that in order to prevent the detenu from affecting public order, his detention under the PD Act was necessary. No material whatsoever was placed before us on behalf of the detenu to show that the subjective satisfaction arrived at by respondent No. 2 is not based on the material, nor that the same is patently wrong. In the absence of any such material, this Court will not sit in appeal over the satisfaction arrived at by respondent No. 2 in the detention order.

8. We shall now deal with the second contention of the learned counsel for the detenu.

The fulcrum of the argument of the learned counsel for the detenu is that the bail orders, on which reliance was placed by respondent No. 2 in passing the order of detention, were neither placed before him nor copies thereof were supplied to the detenu and thereby the detention order is vitiated. He has further submitted that though the bail orders were obtained by the detenu himself and even if he knew the contents thereof, respondent No. 2 is bound to furnish the copies of the same. He has placed heavy reliance on the judgment in *M. Ahamedkutty* (1 supra), wherein the Supreme Court held as under:

"It is immaterial whether the detenu already knew about their contents or not. In *Mehrunissa v. State of Maharashtra* [(1982) 3 SCC 216] it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In *Mohd. Zakir v. Delhi Administration* [1975) 2 SCC 81] it was reiterated that it being a constitutional imperative for the

detaining authority to give the documents relied on and referred to in the order of detention *pari passu* the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5)."

(emphasis supplied)

The ratio that could be culled out from the judgment in *M. Ahamedkutty* (1 *supra*) as well as in *Mehrunissa*, referred to and relied upon in *M. Ahamedkurry* (1 *supra*), is that even if the detenu was aware of the contents of the documents, non-furnishing of the same is fatal, if those documents are "relied on and referred to" in the order of detention and in the grounds of detention.

In *Ichchu Devi Choraria* (3 *supra*), the Supreme Court reiterated this position in paragraph 7 of the judgment observing that the detaining authority was bound to supply the copies of the documents, statements and other materials relied upon in the grounds of detention, to the detenu.

Dealing with the contention that non-consideration of application for bail by the detaining authority was fatal, the Supreme Court in *Sunila Jain* (7 *supra*) after referring to the earlier judgments in *M. Ahamedkutty* (1 *supra*) and *P.U. Abdul Rahiman v. Union of India*, 1991 Supp. (2) SCC 274 observed that whether a detenu on the date of the passing of the order of detention was in custody or not would be a relevant fact, that it would also be a relevant fact whether he is free on that date and if he is, whether he is subjected to certain conditions pursuant to and in furtherance of the order of bail. That if pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be a relevant consideration for the purpose of passing an order of detention, but the converse is not true. The Court has applied the following twin-tests to know whether the constitutional mandate in the matter of preventive detention is violated (i) Whether the impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (ii) Whether relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority. The Supreme Court held that the application for bail was not a vital document and non-supply of copies of the same did not vitiate the detention.

In *Maitreyee Banerjee* (2 *supra*) the preventive detention order was set aside on the ground that the documents regarding the facts mentioned in the grounds of detention referred to and relied upon by the detaining authority were not admittedly furnished to the detenu at the time the grounds were served on him. Relying upon the judgments from *Ichchu Devi Choraria* (3 *supra*) to *Kamla Kanyalal Khushalani v. State of Maharashtra*, (1981) 1 SCC 748 the Supreme Court held that the question of the detenu demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining

authority to furnish documents relied on or referred to in the order of detention *pari passu* the grounds of detention in order that the detenu may make an effective representation immediately, instead of waiting for the documents to be supplied with.

The judgments referred to above thus unequivocally laid down that irrespective of whether a detenu requests for supply of any document or not, it is the constitutional duty and obligation of the detaining authority to furnish all those documents which were referred to and relied upon in the detention order, *pari passu* the grounds of the detention order.

9. We, however, notice a line of cases where the Supreme Court declined to interfere with the orders of detention on the ground of non supply of the documents which were referred to but not relied upon for the purpose of passing detention orders.

In *Radhakrishnan Prabhakaran v. State of Tamil Nadu*, (2000) 9 SCC 170 the Supreme Court drew a distinction between the documents "relied upon" and the documents "referred to" in the order. In paragraph 8 of the report, it was observed: "We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him." This view was reiterated by the Supreme Court in *J. Abdul Hakeem* (11 *supra*).

A constitution Bench of the Supreme Court in *Abdullah Kadher Batcha* (10 *supra*), has reiterated the same view with the following observations.

"The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (sic not) been supplied, they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced."

In the context of the present case, reference to the above precedents will suffice and this Court does not propose to burden this judgment by multiplying references to the judgments taking similar view.

Keeping in view the above ratio, it has to be seen whether the bail orders, copies

of which were not supplied to the detenu, were relied upon in the detention order. In the impugned detention order, respondent No. 2 referred to the above mentioned seven criminal cases and observed that in all those cases the detenu was arrested and released on bail, as per the extant provisions under which the bails were granted, and that the department is unable to prevent the detenu from further indulging in unlawful activities affecting public health and public order. In the grounds of detention, the facts of each of the seven criminal cases were recorded and the opinion of the Chemical Examiner, Regional Prohibition and Excise Laboratory, Warangal, and the letter of the Professor of Medicine, MGM Hospital, Warangal were relied upon and it was observed that as the detenu was engaged in the sale of ID liquor, and his activities affect or are likely to affect adversely in maintenance of public order because they cause gave or widespread danger to the life and public health. Respondent No. 2 further observed as under:

"It is, therefore, established that the cases booked against you under Prohibition and Excise laws failed to curb your illegal activities, which are found to be dangerous to public health and also prejudicial to the maintenance of public order. You are, therefore, a "Bootlegger" as defined under section 2(b) of Andhra Pradesh Prevention of Dangerous Activities of Bootlegger, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

It is imperative to prevent you from acting in any manner prejudicial to maintenance of Public order. I feel that recourse to normal law would involve considerable time and may not be effective deterrent in preventing you from indulging in further activities prejudicial to maintenance of public order in and around Narsampet of Warangal District under Prohibition and Excise Station, Narsampet limits of Warangal District.

On careful consideration of material placed before me, I am satisfied that you are likely to repeatedly indulge in illegal storage and sale of illicitly distilled liquor in and around of Narsampet of Warangal District which is injurious to public health. The launching of prosecution of cases against you in the above mentioned cases is normal course under Prohibition Laws failed to have any desired impact on your clandestine, bootlegging activities since prosecution proceedings take sufficiently along period of time."

A careful reading and understanding of the above detention order and the grounds thereof would show that respondent No. 2 has laid emphasis on the fact that mere registration of the criminal cases and his arrest in connection therewith is proving ineffective, as after being released on bail the detenu was repeating his illegal activities and thereby the ordinary laws are unable to curb his activities which are causing grave and widespread danger to life and public health. In our opinion, respondent No. 2 merely referred to the bail orders and relied upon the fact of repetition of the illegal activities by the detenu after his release in every case. Thus, this is not a case where respondent No. 2 has relied upon the bail orders for detaining the detenu.

10. The learned counsel for the detenu argued with lot of emphasis that some of the bail orders are conditional and therefore the nature of the conditions was very much relevant for respondent No. 2 to consider whether they were sufficient to prevent the detenu from fleeing from justice and that non-consideration of the conditional bail orders has vitiated the detention order. We are afraid, we cannot accept this submission because irrespective of whether the bail orders contained conditions or not, respondent No.2 has arrived at the subjective satisfaction that in spite of his arrest in connection with the criminal cases, the detenu is repeating his activities after being released on bail. This necessarily means that the detaining authority was not only aware of the fact that the detenu was released on bail in all the cases, but also the fact that the ordinary laws set in motion have proved inefficacious. Even the learned counsel for the detenu has not placed before the Court the bail orders which purportedly contained conditions. In any event, the facts of the case, reveal that irrespective of the alleged conditions of bail, the detenu continued his alleged illegal activities which is manifest from the fact that as many as seven criminal cases were registered against him in succession, clearly showing that the alleged conditions of bail did not deter the detenu from repeating his alleged illegal activities.

Conclusion And The Result

11. In the light of the aforementioned discussion, we are of the opinion that non-furnishing of the copies of bail orders to the detenu did not in any manner prejudice his interests and therefore the impugned detention order was not vitiated on that count.

For all the above mentioned reasons, we do not find any ground to interfere with the impugned detention order passed by respondent No. 2, as confirmed by respondent No. 1. The writ petition therefore fails and the same is accordingly dismissed.