
(2008) 10 AP CK 0048
In the Andhra Pradesh High Court
Case No : Writ Petition No. 21302 of 2008

Narasamma

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 22

Citation : (2009) 1 ALT 31

Hon'ble Judges : K.C. Bhanu, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy for M.C. Praveen Kumar, for the Appellant;
Asst. Government Pleader for A.G., for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Heard Sri C. Padmanabha Reddy, learned Senior Counsel, representing Sri C. Praveen Kumar, learned Counsel appearing for the petitioner as well as learned Assistant Government Pleader, representing learned Advocate General, appearing for the respondents.

2. This writ petition is filed seeking to issue a Writ of Habeas Corpus directing the respondents to produce one Kasturi Vasu @ Devarapalli Vasu, husband of the petitioner, who is now detained in Central Prison, Hyderabad.

3. Pursuant to the order of detention, dated 28-7-2008, passed by the first respondent-the Collector and District Magistrate, Visakhapatnam (hereinafter referred to as "the competent authority"), u/s 3(1) and (2) read with Section 2(a) and (f) of the Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity "the Act"), the husband of the petitioner was subjected to detention.

4. For ready reference, the grounds of detention, as mentioned in the order of detention, dated 28-7-2008, in verbatim, are as under:

(1) Kasturi Vasu, S/o Visakantayya, aged about 45 years, C/o.Lingabaiiga, R/o Devarapalli (Village and Mandal), Visakhapatnam District is a "drug offender" as defined u/s 2(f) of A.P. Prevention of Dangerous Activities of Boot-Leggings, Decoits, Drug Offenders etc., Act., 1986, because he finances for cultivation of Ganja plants and buys Dry Ganja from Agency villages, stocks, exports, sells and distributes Ganja. He also expends money in support of his activity.

(2) The above ground is sustained because the individual on 15-1-2000 in Cr. No. 2/2000 (SC No. 15/2001) of the Police Station, Paderu, while transporting 1020 Kgs. Ganja in 36 bags kept under dry coconut bags in a lorry bearing No. AP20 T 3679, the Lorry turned turtle near 12th Mile Stone at Paderu mandal limits, later he was arrested along with others and sent to judicial custody. He was convicted by the Hon'ble Court on 17-3-2003 for 3 years and Rs. 5,000/- fine.

(3) Again on 21-2-2006 in Cr. No. 144/ 2005-06 of the Proh. and Excise Station, Paderu he was found at Sarasapadu mandal limits carrying one gunny bag having about 50 Kgs. of Ganga and on seeing the staff, he ran away. Later he has been arrested on 1-6-2008 and sent to judicial custody.

(4) Again on 21-2-2006 in Crime No. 145/2005-06 of the Proh. and Excise Station, Paderu it is noticed that at Sarasapadu village limits at Survey No. 15/1 in the land of Boina Balanna, S/o Sanyasi, R/o Sarasapadu, Hukumpeta manda 18000 Ganja plants in an extent of about 1.88 Acres were illegally cultivated, on seeing the staff the owner of the land ran away and during the enquiry it is revealed that Kasturi Vasu @ Devarapalli Vasu is in the brain behind this clandestine activity and he finances the innocent tribals and supplies the fertilizers and on that day onwards he was found absconding. Later he has been arrested on 1 -6-2008 and sent to judicial custody.

(5) Again on 21-2-2006 in Crime No. 146/2005-06 of the Proh and Excise Station, Paderu it is noticed that at Sarasapadu village limits at Survey No. 15/2 in the land of Boina Kurmanna, S/o Chinnayya, R/o Sarasapadu, Hukumpeta mandal 25,000 Ganja plants in an extent of about 1.88 Acres were illegally cultivated, on seeing the staff the owner of he land ran away and during the enquiry it is revealed that Kasturi Vasu @ Devarapalli Vasu is in the brain behind this clandestine activity and he finances the innocent tribals and supplies the fertilizers and on that day onwards he was found absconding. Later he has been arrested on 1 -6-2008 and sent to judicial custody.

(6) Again on 21-2-2006 in Crime No. 147/2005-06 of the Proh and Excise Station, Paderu it is noticed that at Sarasapadu village limits at Survey No. 15/3 in the land of Boina Viswamma, S/o Latchanna, R/o Sarasapadu, Hudumpeta mandal 20,000 Ganja plants in an extent of about 2.60 Acres were illegally cultivated, on seeing the staff the owner of the land ran away and during the enquiry it is revealed that Kasturi Vasu and Devarapalli Vasu is in the brain behind this clandestine activity and he finances the innocent tribals and supplies the fertilizers and on that day onwards he was found absconding. Later he has

been arrested on 1 -6-2008 and sent to judicial custody.

(7) Again on 21-2-2006 in Crime No. 148/2005-06 of the Proh and Excise Station, Paderu it is noticed that at Patigaruvu village limits at Survey No. 11/4 in the land of Muduva Devanna, S/o Sanyasi, R/o Patigaruvu, Hukumpeta mandal 5,000 Ganja plants in an extent of about 1.90 Acres were illegally cultivated, on seeing the staff the owner of the land ran away and during the enquiry it is revealed that Kasturi Vasu @ Devarapalli Vasu is in the brain behind this clandestine activity and he finances the innocent tribals and supplies the fertilizers and on that day onwards he was found absconding. Later he has been arrested on 1-6-2008 and sent to judicial custody.

(8) Again on 21-2-2006 in Crime No. 149/2005-06 of the Proh and Excise Station, Paderu it is noticed that at Patigaruvu village limits at Survey No. 11/6 in the land of Janni Thandanna, S/o Ramanna, R/o Patigaruvu, Hukumpeta mandal 14,000 Ganja plants in an extent of about 1.71 Acres were illegally cultivated, on seeing the staff the owner of the land ran away and during the enquiry it is revealed that Kasturi Vasu @ Devarapalli Vasu is in the brain behind this clandestine activity and he finances onwards he was found absconding. Later he has been arrested on 1-6-2008 and sent to judicial custody.

(9) Again on 21-2-2006 in Crime No. 150/2005-06 of the Proh and Excise Station, Paderu it is noticed that at Patigaruvu village limits at Survey No. 14/1 in the land of Somili Yerranna, S/o Polanna, R/o Ratigaruvu, Hukumpeta mandal 69,200 Ganja plants in an extent of about 5.16 Acres were illegally cultivated, on seeing the staff the owner of the land ran away and during the enquiry it is revealed that Kasturi Vasu @ Devarapalli Vasu is in the brain behind this clandestine activity and he finances the innocent tribals and supplies the fertilizers and on that day onwards he was found absconding. Later he has been arrested on 1 -6-2008 and sent to judicial custody.

(10) Again on 21-5-2008 in Crime No. 54/2005-09 of the Proh and Excise Station, Paderu at Patigaruvu village limits while he was ready to transport 10 gunny bags having about 400 Kgs. of Dry Ganja, on seeing the staff in Jeep, he ran away. Later he has been arrested on 1-6-2008 and sent to judicial custody.

(11) Again on 1-6-2008 in Crime No. 62/2005-09 of the Proh and Excise Station, Paderu at about 13.45 Hrs. at Uppa village limits of Hukumpeta Mandal, while he was about to transport about 60Kgs. of Dry Ganja, in two gunny bags he was arrested and sent to judicial custody.

5. From the above, it appears, ground No. 1 is an independent ground with cumulative effect, ground No. 2 is another independent activity allegedly committed by the detenu, on 15-1-2000 and ground Nos. 3 to 9 relate to same kind of activities, allegedly done by the detenu, at different places, by way of cultivating ganja plants, financing and supplying fertilizers etc., to the tribals, to carry out the said cultivation. Since the offences mentioned in ground Nos. 3 to 9 are independent offences, they were registered as different crime numbers.

Ground Nos. 10 and 11 are, again, independent acts, whereunder, it was mentioned that in the year 2008, the detenu was found ready to transport the dry ganja in gunny bags, and the same were registered in two crime numbers.

6. Here, the fact to be noticed is that in connection with all other grounds i.e., ground Nos. 3 to 11, except ground Nos. 1 and 2, in the order of detention, the detenu was arrested on 1-6-2008, sent to judicial custody and he has been in judicial custody as of date.

7. The said order of detention had been ratified by the Government and the Advisory Board, which fact is not in dispute.

8. Learned Senior Counsel, appearing for the petitioner, raised primarily two contentions - firstly, there is no proximity between ground No. 2 and ground Nos. 3 to 11, mentioned in the order of detention. In this connection, he contended that the offences mentioned in ground Nos. 3 to 9 had taken place in the year 2006, whereas the offences mentioned in the last two grounds i.e., ground Nos. 10 and 11 had taken place in the months of May and June 2008, respectively. Therefore, it is his contention that the competent authority had committed an error in taking into account the offences allegedly committed by the detenu in the year 2006 in order to pass the order of detention; and secondly, the detenu was in judicial custody pursuant to the registration of several crime numbers mentioned in ground Nos. 3 to 11, and even as of date, he is in judicial custody, therefore, passing the order of detention under the Act is not justifiable and the same amounts to taking away the right of the detenu guaranteed under Article 21 of the Constitution of India. It is his further contention that there is total non-application of mind on the part of the competent authority in passing the order of detention and accordingly, he prays to set aside the said order of detention.

9. In order to substantiate his contention, the learned Senior Counsel, appearing for the petitioner, places reliance on the judgments rendered by the apex Court in *Rameshwar Shaw Vs. District Magistrate, Burdwan and Another*, and *Dharmendra Suganchand Chelawat and another Vs. Union of India and others*, .

10. On the other hand, learned Assistant Government Pleader, representing learned Advocate General, appearing for the respondents, while contending that the competent authority is absolutely right in passing the order of detention, while the detenu was in judicial custody, places reliance on the judgments rendered by the apex Court in *Alijan Mian Vs. District Magistrate, Dhanbad and Others*, , *Sunil Fulchand Shah Vs. Union of India and Others*, and also *Rameshwar Shaw Vs. District Magistrate, Burdwan and Another*, .

11. In view of the relevant contentions raised by learned Counsel appearing on either side, the main questions that fall for consideration, in this writ petition, are as under:

(1) Whether there is any proximity of the incidents as mentioned in the grounds of order of detention or not?

(2) Whether the order of detention under the Act can be passed, while the detenu was in judicial custody?

12. Apropos the first question, it is to be seen that except ground Nos. 1 and 2, the other grounds i.e., ground Nos. 3 to 9 relate to the offences of the year 2005-06 and ground Nos. 10 and 11 relate to the offences of the year 2008-09.

13. The most important aspect to be noticed, in this connection, is that in spite of the fact that the crime numbers registered against the detenu have been pending investigation since 2005-06, he could not be taken into judicial custody ever since those crime numbers were registered. Only when he was caught in connection with the offences allegedly committed in the year 2008, he was arrested on 1-6-2008 and was sent to judicial custody. The corollary of the judicial custody, pursuant to the apprehension of the detenu, in connection with ground Nos. 10 and 11, virtually, is the basis for the judicial custody of the detenu in connection with ground Nos. 3 to 9.

14. In other words, the detenu was sent to judicial custody in connection with all the offences, including the offences that were taken cognizance of in the year 2005-2006 or 2008-2009. There was no occasion for the authorities to arrest the detenu in connection with the crime numbers registered earlier to 1-6-2008 i.e., in connection with the offences said to have been committed by the detenu, as mentioned in ground Nos. 10 and 11 or pending investigation into the crime numbers which were registered in the year 2005-06. There is absolute proximity between the crimes allegedly committed by the detenu in the year 2005-2006 and 2008-2009 till his arrest on 1-6-2008 and sending him to judicial custody in connection with all the offences regardless of the order of committing the offences. Therefore, the aspect of proximity has got to be sustained and the contention of learned Senior Counsel, appearing for the petitioner, in this connection, cannot be accepted.

15. As regards the other contentions of learned Senior Counsel, appearing for the petitioner, it is relevant to refer to the judgment of the Constitutional Bench of the apex Court in Rameshwar Shaw's case (1 supra), wherein, at para No. 13, it is observed as under:

The question which still remains to be considered is; can a person in jail custody, like the petitioner, be served with an order of detention whilst he is in such state relevant facts, which are not in dispute. The petitioner was arrested on January 25, 1963. He has been in custody ever since. On February 15, 1963 when the order of detention was served on him, he was in jail custody. On these facts, what we have to decide is: was it open to the detaining authority to come to the conclusion that it was necessary to detain the petitioner with a view to prevent him from acting in a prejudicial manner when the petitioner was locked up in jail? We have already seen the logical taking action u/s 3(1)(a). The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he has been acting in a

prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner?

At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order u/s 3(1)(a), and this basis is clearly absent in the case of the petitioner. Therefore, we see no escape from the conclusion that the detention of the petitioner in the circumstances of this case, is not justified by Section 3(1)(a) and is outside its purview.

16. From the above observations, it is abundantly clear that the Constitutional Bench of the apex Court had clearly laid down the principle that while a person is in judicial custody, it is totally inexpedient to pass the order of detention, under the Act.

17. At the same time, it is also the view of the apex Court that there must be sufficient material, apparently, to the satisfaction of the competent authority that the detenu would act in a prejudicial manner in case of his being not in judicial custody.

18. In view of the above said principles laid down by the apex Court, it is always desirable for the competent authority to record the reasons, while passing the order of detention, under the Act, even though the person is in judicial custody.

19. Therefore, it is, again, obvious that an order of detention can, no doubt, be passed against a person when he is either in judicial custody or on bail.

20. After all, the object of the Act is to prevent perpetration of the same offences by the said person in future. In other words, the order of detention shall be passed by the competent authority, under the Act, in furtherance of prevention of repetition of an offence or offences, by the said person, which may cause public disorder.

21. The standard of viewing at an offence under the general law is different from the Special Act like Act 1 of 1986. When a person against whom a crime was registered and was tried, irrespective of his conviction or otherwise, is found to

be involved in similar kind of offence or offences, which are likely to cause public disorder, the competent authority can invoke its jurisdiction under the provisions of the Act.

22. In other words, the order of acquittal passed against the person in a particular case or cases, or the person obtaining bail in a particular case or cases, cannot be a ground for the competent authority to invoke his jurisdiction vested under the Act.

23. It is further to be noticed that the apex Court in Rameshwar Shaw's case (1 supra) made the following observations:

It may not be easy to discover such rational connection between the antecedent history of the person who has been sentenced to ten years rigorous imprisonment and the view that his detention should be ordered after he is released after running the whole of his sentence, therefore, we are satisfied that the question as to whether an order of detention or in jail will always have to be determined in the circumstances of each case.

24. Therefore, it is for the competent authority to record a finding as regards his absolute satisfaction about the passing of the order of detention notwithstanding the fact that the person is in judicial custody or not.

25. While following the principles laid down by the Constitutional Bench of the apex Court, the apex Court, consisting of three judges, in Dharmendra's case (2 supra), made the following observations:

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

26. In view of the said observations and as we have already pointed out, it is always expedient for the competent authority to record the special circumstances in the order of detention. In other words, the compelling circumstances are to be put on record by the competent authority to pass the order of detention, respective of a person being in judicial custody or not.

27. The main thrust is on the satisfaction of the competent authority as to the likelihood that after the person is released from custody, he would indulge in

prejudicial activities and it is necessary to detain him in order to prevent him from indulging in such activities in future.

28. However, the apex Court in Dharmendra's case (2 supra), having regard to the facts and circumstances of the said case, observed as under:

It is however clarified that in case, the appellants are released from custody in the aforesaid criminal proceedings, the question of their preventive detention under the Act on the above material may be reconsidered by the appropriate authority in accordance with law and this decision shall not be construed as impediment for that purpose.

29. From a conjoint reading of the two decisions, referred to above, it is obvious that - (a) in normal course, no order of detention is expedient to be passed against a person, who is already in judicial custody, (b) in exceptional cases, the order of detention can be passed even though the person is in judicial custody (c) while passing such an order of detention, when the person is in judicial custody, the competent authority shall record the special reasons and the circumstances under which he is satisfied that, in case, the person is released for any reason, either on bail or after trial, he is likely to cause further prejudicial acts, contrary to the public order.

30. Learned Assistant Government Pleader, appearing for the respondents, contended that the action initiated by the State in the interest of society or public shall be given priority and in support of her contention, she places reliance on the decision of the apex Court in Sunil Fulchand Shah v. Union of India (4 supra).

31. In the said case, the observations made by the apex Court, which are relevant to the said contention, are as under:

Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. Since, preventive detention is a form of precautionary State action, intended to prevent a person from indulging in a conduct, injurious to the society or the security of the State or public order, it has been recognized as "a necessary evil" and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. However, the power being drastic, the restrictions placed on a person to preventively detain must, consistently with the effectiveness of detention, be minimal.

32. It is further observed by the apex Court in Alijan's case (3 supra) as under:

It is obvious from the above observation in the case cited on behalf of the petitioners that criminal prosecution is not an absolute bar to an order of preventive detention. If the detaining authority has the subjective satisfaction that it was necessary to detain the petitioners to prevent them from indulging in

activities prejudicial to public order, he could certainly order detention of the petitioners. In the instant case, the detaining authority clearly stated that although the petitioners were in jail, they were likely to be enlarged on bail and in that case there would be apprehension from the petitioners regarding the breach of public order.

33. Of course, the Assistant Government Pleader, however, relies on the observations made by the Constitutional Bench of the apex Court, which have already been recorded to the effect that depending upon the facts and circumstances of the case, the order of detention has to be passed though the person is in judicial custody.

34. All these decisions and the observations and the principles laid down thereunder, are totally unexceptionable.

35. However, having regard to the facts and circumstances of the case, particularly in view of the principles laid down by the apex Court in Rameshwar Shaw's case (1 supra), it is to be noticed that the Constitutional Bench of the apex Court in Sunil's case (4 supra) had no occasion to consider the aspect as to whether the order of detention can be passed while the person is in judicial custody or not.

36. Therefore, on this aspect we are bound by the decision rendered by the Constitutional Bench of the apex Court in Rameshwar Shaw's case (1 supra) and the principles laid down in Dharmendra's case (2 supra).

37. It is to be further noticed that, in the present case, when the petitioner is in judicial custody he has every right under law to make an application seeking bail and, in case, any order of bail is passed by the competent Court, the same would be, virtually, nullified because of the present order of detention, under the Act.

38. Similarly, even if the detenu is tried in any one of the cases, which are pending as of now and acquitted therein, he cannot have the benefit of the said order of acquittal because of the present order of detention. The net result would be - for a period of one year, the petitioner would be deprived of the benefit of being released either on bail or by any order of acquittal and furthermore, it is to be noticed that no special reasons are recorded by the competent authority as regards the apprehension that in case the detenu was released on bail, he would do acts contrary to public order. Of course, there is a bleak mention about such an apprehension in the said order of detention, but the same is not that affirmative and assertive, as is expected.

39. Therefore, having regard to the facts and circumstances of the case and in view of the judgments rendered by the apex Court in Rameshwar Shaw's case (1 supra) and Dharmendra's case (2 supra), we are of the considered view that the order of detention, dated 28-7-2008, passed by the competent authority is not justifiable and is liable to be set aside.

40. Accordingly, the Writ Petition is allowed, setting aside the order of detention,

dated 28-7-2008, passed by the first respondent-the Collector and District Magistrate, Visakhapatnam. It is made clear that in the event of the alleged detenu being released from judicial custody, the competent authority is always at liberty to pass appropriate orders, after reviewing the situation, prevailing at the relevant point of time, in accordance with law.

41. It is also made clear that the alleged defenu is at liberty to approach the competent Court seeking his release, in accordance with law.