

(2010) 03 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26735 of 2009

Sathupathi Amaravathi

APPELLANT

Vs

District Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 12, 13, 2, 3(1), 3(2)
Andhra Pradesh Prohibition Act, 1995 — Section 7A, 8
Constitution of India, 1950 — Article 22(5)

Citation : (2010) 1 ALD(Cri) 605 : (2010) 2 ALT 625

Hon'ble Judges : G.V. Seethapathy, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : K. Somakonda Reddy, for the Appellant; Asst. Government Pleaders for A.G., for the Respondent

Final Decision : Dismissed

Judgement

G.V. Seethapathy, J.—This writ petition is filed seeking a writ of Habeas Corpus with a direction to the respondents to produce the detenu Sathupathi Ramesh @ Mallesh holding that his detention by virtue of orders in Ref. No. C1/672/09 dated 26-09-2009 of the 1st respondent-District Collector and Magistrate, Kadapa, as confirmed by G.O.Rt. No. 5206 General Administration (Law and Order-II) Department dated 30-10-2009, as illegal and void and to set him at liberty.

2. Heard the learned Counsel for the petitioner and the learned Assistant Government Pleader, representing the learned Advocate General, on behalf of the respondents. Perused the records, including the counter-affidavit filed by the 1st respondent and the reply affidavit filed by the petitioner.

3. The petitioner is the wife of the detenu viz., Sathupathi Ramesh @ Mallesh, who was detained by an order dated 26-09-2009 passed by the 1st respondent u/

s 3(1) and (2) read with Section 2(a) and 2(b) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986) (for short "the Act"). He was arrested on 26-09-2008 and detained in Central Prison, Cherlapalli, Ranga Reddy District. The order of detention was approved by the Government in G.O.Rt. No. 4770 G.A (L&O-II) Department dated 03-10-2009. Subsequently, the Advisory Board constituted u/s 9 of the Act reviewed the case and gave a report dated 27-10-2009 opining that there is sufficient cause for detention of Sathupathi Ramesh @ Mallesh. After considering the said report of the Advisory Board, the Government in exercise of the powers conferred u/s 12(i) read with Section 13 of the Act confirmed the order of detention directing that the detention be continued for a period of 12 months from 27-09-2009, the date of detention, by G.O.Rt. No. 5206 dated 30-10-2009.

4. According to the respondents, the detenu was repeatedly indulging in transportation and sale of illicitly distilled arrack in contravention of the A.P. Excise Act, 1968 and the A.P. Prohibition Act, 1995 and the illicitly distilled arrack seized from his possession was found to be injurious to public health. In the grounds of detention, which were communicated to the detenu along with the order of detention, three instances of the alleged acts constituting the offences under the A.P. Excise Act and the A.P. Prohibition Act were narrated. It stated that on 10-01-2009, the detenu along with one Shaikh Mahaboob Basha was found to be in possession of 40 litres of illicitly distilled arrack and a case in Cr. No. 286/ 2008-09 u/s 7-A read with Section 8(e) of the A.P. Prohibition Act, 1995 was registered in Prohibition and Excise Station, Pulivendula and the sample on analysis was found to be illicitly distilled liquor, unfit for human consumption. After completion of investigation, charge sheet was filed and the same was taken cognizance in C.C. No. 260 of 2009 by the Magistrate concerned. It is further alleged that on 17-02-2009, 56 litres of illicitly distilled arrack was seized from the possession of the detenu and one Shaikh Mahaboob Pasha and a case in Cr. No. 329/ 2008-09 was registered in Prohibition and Excise Station, Pulivendula and the same was found to be illicitly distilled liquor, unfit for human for human consumption. After completion of investigation, charge sheet was also filed and the same was taken cognizance in C.C. No. 273 of 2009 by the Magistrate concerned. It is further alleged that on 15-09-2009, 72 litres of illicitly distilled arrack was seized from the possession of the detenu and Cr. No. 34/2009-10 was registered in Prohibition and Excise Station, Muddanur and the sample on analysis was found to be illicitly distilled liquor, unfit for human consumption and injurious to health and the matter is still pending under investigation. In all the three cases, the detenu is said to have been granted bail.

5. Sri Soma Konda Reddy, learned Counsel for the petitioner would mainly contend that the order of detention passed by the 1st respondent is vitiated for non-application of mind. According to him, grant of bail for the detenu in all the three cases is a vital factor to be taken into consideration before his detention could be ordered, but the same was ignored and the copies of the bail

applications and bail orders were not served on the detenu along with the grounds of detention.

6. In the affidavit filed in support of the writ petition, it is averred that the fact that the detenu was granted bail in all the three cases was not brought to the notice of the detaining authority. It is further pleaded that the failure to place the applications for bail and the orders granting bail before the detaining authority and the failure to supply the copies of the same to the detenu has deprived him of making an effective representation. In the counter-affidavit filed by the 1st respondent, it is averred that the copies of the bail application and bail orders were served on the detenu along with the grounds of detention and the fact that the detenu was granted bail in all the three cases was within the knowledge of the 1st respondent while passing the order of detention.

7. The petitioner filed reply affidavit wherein it is stated that the certified copies of bail applications and bail orders in the three cases were obtained on 30-09-2009 only, as seen from the endorsement of the Court and, therefore, they could not have been served on 26-09-2009 when the detenu was taken into custody. The learned Counsel for the petitioner would contend that as the certified copies of the bail applications and bail orders were obtained only on 30-09-2009, there was no occasion for the 1st respondent to peruse the same before he had passed the order of detention on 26-09-2009 and hence there was no application of mind to the vital fact of the detenu having been granted bail in all the three cases.

8. It is not disputed that the order of detention along with the grounds of detention and the supporting material papers were served on the detenu under his acknowledgement. The certified copies of the bail applications and bail orders filed by the respondents no doubt show that they were issued by Judicial Magistrate of the First Class, Pulivendula on 30-09-2009.

9. The crucial question to be considered is whether or not the detaining authority, the first respondent, was aware of the factum of grant of bail to the detenu in the three cases while passing the order of detention and there was application of mind to the said fact before passing the order of detention.

10. The fact that the detenu was granted bail in the three cases was never disputed. As seen from the material on record, the detenu was served with the order of detention and grounds of detention and the supporting material at the time when he was taken into custody, under his acknowledgement. The supporting material is required to be supplied to the detenu so as to enable him to make an effective representation against the order of detention either to the Detaining Authority or to the Chief Secretary or the Advisory Board. Admittedly, there was no representation by the detenu before the detaining authority or the Chief Secretary. As seen from G.O.Rt. No. 5206 dated 30-10-2009, the Advisory Board reviewed the case on 27-10-2009 and opined that there was sufficient cause for detention of the detenu and accepting the said report, the Government

confirmed the orders of detention for a period of 12 months. By the time of review of the case by the Advisory Board, the certified copies of the bail applications and bail orders were already available, they having been obtained on 30-09-2009. Thus, there was no hindrance for the detenu to make an effective representation or the Advisory Board to consider the same, as the entire material including the certified copies of bail applications and bail orders were made available. Even otherwise, applying for bail and grant of bail is a fact in the knowledge of the detenu himself and the same was never disputed. It is not a case where the documents not in the knowledge of the detenu were sought to be relied on or were not made available to the detenu at the relevant point of time. The fact that the certified copies of bail applications and bail orders were obtained on 30-09-2009 is, therefore, of no consequence and the same does not cause any prejudice to the detenu.

11. Hence, the only question that arises for consideration is whether on the date of passing the order of detention, the 1st respondent was aware of the factum of grant of bail and having applied mind to the said fact also, the 1st respondent ordered detention. Simply because the certified copies were obtained on 30-09-2009, no inference can be drawn that the factum of grant of bail in the three cases was not brought to the notice of the 1st respondent. The order of detention would show that the connected records pertaining to the cases clearly showed that the detenu was obtaining bail within a week by taking advantage of the provisions of the Act and thereby the department was unable to prevent him from indulging in dangerous activities adversely affecting public health. The thrust of the allegation and the ground for detention as could be discerned from the order of detention is that the detenu was repeatedly indulging in the alleged offences after obtaining bail within a short while and the department was unable to prevent him from indulging in such dangerous activities adversely affecting public health. The repeated indulgence in crime offending public health taking advantage of grant of bail is the gravamen of the charge made against the detenu. The 1st respondent was, therefore, kept informed of the factum of grant of bail in favour of the detenu in the successive cases registered against him. It is only because of the alleged indulgence of the detenu in such crimes in spite of grant of bail, the detention was ordered on the ground that the department was unable to prevent him from committing such offences. It cannot, therefore, be said that there was non-application of mind on the part of the 1st respondent to the factum of grant of bail to the detenu in the three cases. The due application of mind to the said fact is clearly manifest from the order of detention itself which disclose that the connected records pertaining to the cases were placed before the 1st respondent and the said record showed that the detenu was obtaining bail within a week of the commission of the offence and indulged in repetition of the crime.

12. The learned Counsel for the petitioner relied on a decision in *M. Ahamedkutty Vs. Union of India (UOI) and Another*, wherein the Apex Court held that non-furnishing of the copies of the bail application and bail order results in violation

of Article 22(5) of the Constitution and non-consideration of the bail order amounts to non-application of mind. In the above case, it was contended that all the documents and material, particularly the appellant's bail application and bail order and the show cause notice and reply thereto were not placed before the detaining authority and thus there was non-application of mind. It was contended on behalf of the State that the bail application as well as the bail order were placed before the detaining authority but the same having not been referred to or relied on by the detaining authority, the copy thereof was not required to be furnished to the detenu along with grounds of detention, the Court held that from records it appears that bail application and bail order were furnished to the detaining authority on his enquiry and it cannot, therefore, be said that the detaining authority did not consider or rely on them. However, non-supply of the bail application and bail order, having been found to be apparent the legal consequence is bound to follow. In the present case also, the record discloses that the bail application and bail order were made available to the detaining authority and the application of mind by the detaining authority to the factum of grant of bail in the three cases is manifest from the order of detention. It is not the case of the respondents that the bail application and bail order were not relied on by the detaining authority and, therefore, they were not required to be furnished to the detenu. The present case is one where the bail applications and bail orders were relied on by the detaining authority and copies thereof were also furnished to the detenu under his acknowledgment to enable him to make an effective representation before the authority concerned. The decision cited, therefore, is not applicable to the facts of the present case.

13. In Abdul Sathar Ibrahim Manik Vs. Union of India and others, the Apex Court held as follows:

In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

The principle laid down in the above decision is not disputed and the same, in fact, has been followed in the present case.

14. The learned Counsel for the petitioner invited attention to a decision in Kallay Mutyallamma v. District Collector, East Godavari and Ors. 2007(5) ALT 475 (DB), wherein a Division Bench of this Court held that omission to mention the factum of obtaining bail on the last occasion when bail orders obtained on earlier occasions were mentioned vitiates the entire proceedings and the order of detention. In the above case, there were five incidents in which the detenu was granted bail but in the order of detention, reference was made to the grant of bail in items 1, 2, 3 and 5 but no mention was made regarding grant of bail in item 4 which actually was the last incident that prompted the detaining authority to pass the impugned order. It was held that when the detaining authority was

made available with the entire material, including the bail applications and orders of bail, it is for sure that the detaining authority had knowledge of all the events and if that be the case, there is no necessity for the detaining authority to make a reference of the bail orders passed in items 1, 2, 3 and 5 but non-mentioning of the bail order in item 4 which was the last incident amounted to arbitrariness and non-application of mind. Such a situation does not arise in the present case for the reason that grant of bail in all the three cases is referred to in the order of detention, thereby indicating application of mind to the said fact.

15. The learned Assistant Government Pleader appearing for the respondents invited attention to a decision of the Apex Court in *Sunila Jain Vs. Union of India (UOI) and Another*, wherein it was held as follows:

In the instant case save and except the submission that the offence is bailable in nature, no other contention which was required to be brought to the notice of the detaining authority was put forward. The order of detention had taken note of the fact that the detenu had already been released on bail. It is also not in dispute that a copy of the order granting bail and order of remand had been furnished to the detenu. Therefore, non-furnishing of a copy of the application of bail cannot be said to be a ground which impaired the subjective satisfaction of the detaining authority or the same was a relevant fact which was required to be taken into consideration by him and the application for bail was required to be supplied to the detenu. It is now well settled that all the documents placed before the detaining authority are not required to be supplied; only relevant and vital documents are required to be supplied.

It was further held as under:

As in this case, the application for bail was not a vital document, copy whereof was required to be supplied to the detenu, the order of detention is not vitiated.

In the present case also, the order of detention had taken note of the fact that the detenu had already been released on bail. It is also not in dispute that copy of the order granting bail has been furnished to the detenu. The copy of application for bail was also furnished to the detenu. All the vital documents have, in fact, been supplied to the detenu. The question of order of detention or subsequent GO confirming the order of detention passed on the report of the Advisory Board getting vitiated on account of any non-supply of vital documents, does not arise. The contention of the learned Counsel for the petitioner that there was non-application of mind on the part of the detaining authority while passing the order of detention on 26-09-2009 because the certified copies of the bail applications and bail orders were obtained subsequently on 30-09-2009, is untenable, for the simple reason that the material on record, particularly the order of detention shows that all the connected records pertaining to the cases were placed before him and the factum of grant of bail in the three cases was in the knowledge of the detaining authority and hence it cannot be said that there was any non-application of mind to the said fact.

16. In the circumstances, it is held that the order of detention in Ref. No. C1/672/09 dated 26-09-2009 passed by the 1st respondent-District Collector and Magistrate, Kadapa, as confirmed by G.O.Rt. No. 5206 General Administration (Law and Order-II) Department dated 30-10-2009, is held not liable to be interfered with.

17. In the result, the writ petition is dismissed. There shall be no order as to costs.