

(2010) 06 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28325 of 2009

Smt. Mathangi Venkayamma

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 12, 12(1), 13, 14, 14(2)
Constitution of India, 1950 — Article 21, 22, 22(5)
National Security Act, 1980 — Section 13, 3
Penal Code, 1860 (IPC) — Section 324, 34, 341, 384, 506

Citation : (2010) 5 ALT 322 : (2010) 3 APLJ 75

Hon'ble Judges : R. Kantha Rao, J; B. Prakash Rao, J

Bench : Division Bench

Advocate : J. Ravikanth, for the Appellant; The A.G. G.P. for Home, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This petition is filed seeking the Writ of Habeas Corpus for production of Mathangi Durga Prasad @ Pilla Chanti S/o late Sambasiva Rao, Resident of Vijayawada city before this Court forthwith and to declare the action of the respondents as illegal and unconstitutional and consequently to set aside the impugned order of detention made in C. No. 75/C.P/CAMP/2009, dated 09.11.2009 of the first respondent.

2. The Commissioner of Police and Additional District Magistrate, Vijayawada City in exercise of powers conferred under Sub-section 2 of Section 3 read with Section 2(g) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 ordered detention of of Mathangi Durga Prasad @ Pilla Chanti, the son of the writ petitioner -Mathangi Venkayamma on 09.11.2009 and directed that he be lodged in Central Prison, Rajahmundry.

3. The detention order states that the detenu -Mathangi Durga Prasad @ Pilla Chanti is a goonda habituated to violent activities, a rowdy sheet was opened against him in the year 1997 and it is being maintained in I Town Police Station, Vijayawada City. That he is habituated to commit crimes, formed a gang of his associates in Vijayawada City with a view to terrorize the public and cause fear in their minds.

4. The detention order further indicates that a case in Crime No. 224 of 2005 u/s 384 IPC was registered against him and his two associates in Tadepally Police Station of Guntur District on 08.12.2005 on the ground of forcibly extracting cash of Rs. 1200/- on point of knife from one Bhukya Hari Krishna Naik by putting him into fear of death. The offence was investigated into and a charge sheet was filed and the said case was pending in C.C. No. 27 of 2006 on the file of the Additional Junior Civil Judge, Mangalagiri, Guntur District.

5. Another case in Crime No. 146 of 2006 under Sections 341, 324, 506 read with 34 IPC was registered against him and another on 19.04.2006 on the allegation of wrongfully restraining one Bethapudi Ananda Sudhir and his brother Dweevedi and beat them with sticks and threatened them with dire consequences due to previous grudges. The crime was also investigated and charge sheet was filed on 24.05.2006 and the said case was pending in C.C. No. 558 of 2006 on the file of the Chief Metropolitan Magistrate, Vijayawada and the same was compromised in Lok Adalat on 14.03.2008.

6. A case in Crime No. 502 of 2008 under Sections 324, 506 read with 34 IPC was registered against him and another on the allegation that they beat one Kanuri Baskara Rao caused injuries to him and threatened him with dire consequences on the ground that the said Kanuri Baskara Rao and his brother teased and harassed the sister and niece of accused No. 1 in the said crime i.e. Vangala Ramchandra Rao @ Bujji and subsequently the said case was compromised in Lok Adalat on 20.09.2008.

7. A case in crime No. 205 of 2009 under Sections 341, 324, 506 of IPC was registered on 22.03.2009 against the detenu on the allegation of wrongfully restraining one Vangala Ramachandra Rao @ Bujji in a drunken state, beating him with knife and iron rod and causing injuries to him on his face and threatening him with dire consequences on the ground that he gave information to the police about the movements of the detenu. This case was also investigated into and charge sheet vide C.C. No. 375 of 2009 was filed and the same was pending trial before the Chief Metropolitan Magistrate, Vijayawada.

8. Similarly another case was pending investigation against him relating to an incident occurred on 26.06.2009 in which allegedly, the detenu teased Kama Mounika, girl aged 17 years using vulgar and indecent language expressing his desire to marry her and harassed to fulfill his sexual desire and when her parents and the family friend of the said girl questioned the highhandedness of the detenu, he allegedly beat them with hands and threatened them with dire

consequences.

9. The order of the detention passed by the Commissioner of Police, Vijayawada City was approved by the Government of Andhra Pradesh vide their G.O. Rt. No. 5498, dated 13.11.2009.

10. Thereafter, the Advisory Board constituted u/s 9 of the Act having heard the detenu, his mother, wife and the investigating officers and upon perusing the connected records, reviewed the case on 20.11.2009 and opined that there is sufficient cause for the detention of the detenu, Mathangi Durga Prasad @ Pilla Chanti. After due consideration of the report of the Advisory Board, the material available on record, the Government in exercise of powers conferred under Sub-section (1) of Section 12 read with Section 13 of the said Act confirmed the order of detention and directed that the detention of Mathangi Durga Prasad @ Pilla Chanti shall be continued for a period of 12 months from the date of his initial detention i.e. from 10.11.2009.

11. The writ petitioner, who is the mother of the detenu submitted in the writ petition that her son Mathangi Durga Prasad, the detenu is a lorry driver by profession and he is a law abiding citizen, all the cases were foisted by his rival, due to financial dispute with him, to wreck personal vengeance and the detenu cannot be said to be a goonda or any such anti social element to be detained in prison.

12. The detention order was challenged on the grounds viz. the detenu was not convicted in any of the four cases and only one crime is pending against him, the remaining cases were either settled before the Lok Adalat or ended in acquittal and therefore, such cases cannot form the basis of detention. The civil disputes, confessional statements of co-accused, the allegations which were not proved, according to the petitioner, could not become ground for detention. It has been further contended that the detention order was passed by the detaining authority in mechanical way without applying his mind to the facts, only at the instance of the fourth respondent, and as such, the detention order is vitiated since the case does not come under the purview of Act 1 of 1986. It has been further submitted that it is significant to note that within four hours after compromise in Crime No. 205 of 2009 in Mega Lok Adalat, the son of the writ petitioner was taken into custody by the fourth respondent. It has been further contended that the representation filed by them before the Advisory Board on 20.11.2009 was not considered and without assigning any convincing reasons, the detention order was confirmed.

13. We have heard Sri Ravikant Jandhyala, learned Counsel appearing for the writ petitioner and Smt. Mohana, learned Counsel representing the Government Pleader for Home.

14. Learned Counsel appearing for the writ petitioner would submit that the material facts viz. the acquittal of the detenu in three cases, compromising one case in Mega Lok Adalat and that only one case was pending investigation had

not been brought to the notice of the detaining authority and therefore, the detention order is vitiated. In support of his contention, he relied on *Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another*, in which case before the Apex Court it was found that the acquittals of the detenu in two of the cases shown in the table appended to the grounds of detention had not been brought to the notice of the detaining Authority and on the other hand, they were withheld and the detaining authority was given to understand that the trial of those cases was pending. The Supreme Court held that the requisite subjective satisfaction of the detaining authority, which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind resulted in non-application of mind of the detaining authority to the said fact and vitiated the subjective satisfaction, rendering the detention order invalid.

15. *M. Prema Bai v. the Commissioner of Police And Ors.* 2002(2) ALT (Crl.) 487 (D.B) (A.P.), in which case the material of acquittal and grant of bail to the detenu in all cases were not placed before the detaining authority. A Division Bench of this Court took a view that non consideration of the same leads to a doubt as to what was really considered by the detaining authority, renders the order of detention illegal and the order is liable to be quashed.

16. Further the learned Counsel relied on *Pilli Yeteswari and Anr. v. Government of Andhra Pradesh and Ors.* 1997 (1) ALT (CRL) 184 (D.B.)(A.P) where in a Division Bench of this Court took a view that pending of several criminal cases against the detenu, more particularly, when in most cases, the detenus were acquitted and few cases pending cannot be a basis of concluding that they are goondas within the meaning of Section 2(g) of the Act 1 of 1986 and the detention order is liable to be set aside.

17. His argument is that in the instant case also there is no justification for the detaining authority to say that on mere pendency of the criminal cases, he arrived at the satisfaction that the detenu is a goonda and his acts affected adversely or likely to effect adversely the maintenance of public order.

18. Learned Counsel would further submit that the order of the Advisory Board does not reflect that it was passed considering the representation made by the detenu and his family members and therefore, the order passed by the Advisory Board which confirmed the order of the detaining authority is vitiated for violating principles of natural justice.

19. In this context, we may refer to the judgments relied upon by the learned Counsel representing Government Pleader for Home before arriving at a decision on the contentions urged. In *Haradhan Saha Vs. The State of West Bengal and Others*, wherein the Supreme Court noticed some principles which emerge from the judicial decisions reviewed by it. They are broadly stated as follows:

Merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence would not by itself debar the Government from

taking action for his detention under the Detention Laws. The fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure may be no bar against the District Magistrate issuing an order under the preventive detention. The mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. The order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.

20. In *Ashok Kumar Vs. Delhi Administration and Others*, where in the Apex Court held as follows:

Preventive detention is devised to afford protection to society. Any preventive measures, even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. Justification for such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. The Executive is empowered to take recourse to its power of preventive detention in those cases wherein the court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person who has overawed witnesses or against whom no one is prepared to depose.

There is no constitutional imperative that no person shall be detained under preventive detention law without being informed of the grounds for such detention. The law is that the detaining authority must, as soon as may be, i.e. as soon as practicable, communicate to the detenu the grounds on which the order of detention has been made. In the absence of any allegations as to mala fides on the part of the detaining authority or that the detention was for non-existent grounds, the order of the detention is not rendered invalid merely because the grounds of detention were furnished two days later." Referring to Sections 3 and 13 of National Security Act, 1980 (65 of 1980) and Articles 21 and 22 of the Constitution of India, the Supreme Court held as follows:

Section 3 of the Act does not oblige the detaining authority to specify the period of detention also while passing the order of detention. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case, namely, the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the maximum period of 12 months as laid down in Section 13 of the Act.

21. We now turn to the facts of the present case. In his order the third respondent-detaining authority illustrated the instances which were born out from the cases registered against the detenu and specifically mentioned in the order that the detenu has habitually been committing acts of violence along with his gang in Vijayawada city, creating terror, fear and feeling of insecurity to his rivals as well as to the general public and the said acts clearly showed that he is

a goonda and he is acting in a manner prejudicial to the maintenance of public order.

22. Since the prosecution for the criminal offences and the order of preventive detention operate in two different fields, even if the detenu is acquitted in all the criminal charges leveled against him it does not affect the decision arrived at by the detaining authority so long as there is some reasonable basis for the said authority to pass the order of detention. In the present case, some cases filed against the detenu were compromised before the Lok Adalat and some cases ended in acquittal as nobody was dare enough to give evidence against the detenu and in one case, the investigation was still pending on the date of the impugned order. When the general public or rivals are scared of the detenu, the normal course which can be expected for all these, is either to compromise or not to give evidence against the detenu.

23. According to Clause (a) of Section 2 of the Act:

acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order: As per the explanation, public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave of widespread danger to life or public health.

24. Therefore, the proof of criminal offences involving the anti social or unlawful activities of the detenu is not a pre-requisite for passing the order of detention. It is only the subjective satisfaction of the detaining authority having regard to the material placed before him, which ultimately results in the decision of either passing an order of detention or refraining from passing any such order. In the case in had, all the offences wherein the detenu was allegedly involved are either property offences or offences against human body and they from the record available before us are of such a nature causing terror, fear or feeling of insecurity among general public. If the detaining authority arrives at the opinion that the detenu did indulge in the activities which are borne out from the material placed before him, he can pass the order of detention even though such activities involving criminal offences have not in fact, been proved in a prosecution before any court of law or even there is no likelihood of their being proved in a Court of law for variety of reasons. The only requirement is that there must be some reasonable basis for the detaining authority for making the order of detention having regard to the materials placed before him.

25. As regards the contention that ordering the detention initially for the maximum period of 12 months is illegal, we may state that Section 13 of the Act

lays down that the maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed u/s 12 shall be twelve months from the date of detention. Similarly, Section 14 of the Act says that on availability of any new materials at any time, the Government can revoke or modify the order of detention passed by the detaining authority. Further, the revocation or expiry of detention order is not a bar for making of fresh detention order u/s 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry, as laid down in Sub-section 2 of Section 14.

26. Therefore, in the instant case, even if the detention order was initially passed for a period of 12 months, since it was confirmed by the Advisory Board and the Government, it relates back to the date of detention and such an order cannot be said to be illegal and on that score, the writ petitioner cannot contend that the detention order is liable to be quashed.

27. As regards the non supply of the complete material by the detaining authority to the detenu which form the basis for detention, we may state that no such contention was raised before the detaining authority or the board and the material available on record clearly indicates that the entire material on which the reliance was placed has been furnished to the detenu and therefore, we see no force in the said contention and moreover as held by the Division Bench in *Y. Gowtham Siddhartha v. the Commissioner of Police and Additional District Magistrate, Vijayawada City and Ors.* 1995(2) ALT (CRL) 68 (D.B.)(A.P.) the detenu is only entitled to communication of grounds and not of facts and the right of detenu to make effective representation is not affected by non disclosure of reliable information referred to and the order of detention cannot therefore, be violative of Article 22(5) of the Constitution of India. According to the Division Bench, if the material, which in the opinion of the detaining authority shall not be furnished to the detenu in the public interest, it may not furnish the said material to the detenu. The only question requires consideration is whether the detenu was in a position to make effective representation to the Advisory Board. However in the instant case, the case record reveals that the entire material has been furnished to the detenu and no such representation having been made to the authorities concerned at any point of time, it is not now open for the detenu to raise such plea.

28. For the foregoing reasons, we are unable to accept the contention urged by the writ petitioner that the order of detention is liable to be quashed and we absolutely see no merit in the writ petition and the same is liable to be dismissed.

29. Accordingly, we dismiss the writ petition. There shall be no order as to costs.