
(2010) 06 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27812 of 2009

Susheel Kumar

APPELLANT

Vs

Govt. of A.P. and Another

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
National Security Act, 1980 — Section 13, 3

Citation : (2010) 2 ALD(Cri) 115 : (2010) 5 ALT 267 : (2010) CriLJ 4185

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

Bench : Division Bench

Advocate : C. Raghu, for the Appellant; A.G. G.P. for General Administration, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This writ petition is filed seeking issuance of Writ of Habeas Corpus directing the respondents to produce Smt. Lalitha W/o Susheel Kumar and set aside the detention proceedings No. B2/461/09/ESD, dated 13.11.2009 and consequential G.O. Rt. No. 5547, dated 18.11.2009 issued by the first respondent.

2. We have heard Sri C.Raghu, learned Counsel appearing for the writ petitioner and Smt. Mohana, learned Counsel representing the Government Pleader for Home.

3. The writ petitioner is the husband of the detainee Smt. Lalitha, resident of Hyderabad city. The detention order dated 13.11.2009 was passed under the Provisions 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) directing her detention in pursuant to the said order she was lodged in special prison for Women, Chenchalguda, Hyderabad.

4. The grounds of detention showed that she was involved in illegal storage,,

transport, possession and sale of illicitly distilled liquor and that she was allegedly involved in such instances on 19.06.2009, 18.07.2009, 04.08.2009, 19.09.2009, 20.10.2009 wherein large quantities of illicit liquor was said to have been recovered from her possession. She was arrested in all the cases and was produced before the Magistrate concerned and was remanded to judicial custody. She was granted bail in all cases. This fact has been clearly mentioned in the order of detention. The detaining authority viz. the second respondent had specifically mentioned in the detention order that the detainee has been repeatedly involved in the activities of transport, possession and sale of illicitly distilled liquor in contravention of the provisions of the A.P. Prohibition Act, 1995 as amended in 1997, thus, indulging in the said lawless activities is prejudicial to the maintenance of the public order and it is dangerous to the life and the public health. The writ petitioner challenges the order of detention as arbitrary and contrary to the provisions of Act 1 of 1986.

5. Firstly, it has been contended that all the cases which according to the detaining authority afforded adequate grounds for detention are of the year 2009 and are at the stage of investigation and therefore, mere booking of cases repeatedly in short duration could not have been the basis for passing the order of detention. Secondly, that in all the cases, the detainee has been released on bail. That except referring five cases booked against the detainee there was no material disclosed from the impugned orders the reasons actually made the respondents to satisfy themselves about the conduct of the detainee being prejudicial to the maintenance of the public order and therefore, the order of detention passed by the second respondent is without jurisdiction.

6. Nextly, the report of chemical analysis of the liquor allegedly seized from the detainee in five cases does not disclose that the said liquor is harmful and injurious to health. The analyst report merely, stated that it is unfit for portable purpose. Merely because it is unfit for portable purpose as stated by the chemical analyser, it cannot afford a ground to pass an order of detention against the detainee.

7. Further that in all the cases charge sheets have been filed which fact had not been taken into consideration while passing the impugned order and absolutely there is no reference in the impugned order about the contents of the charge sheets though the copies of the charge sheets have been placed before the second respondent.

8. To support the above contentions reliance is placed by the learned Counsel appearing for the writ petitioner on *Lalitha Vs. State of Andhra Pradesh and Another*, where a Division Bench of this Court referring to several judgments rendered by the Apex Court and this Court held as follows:

That mere registering crimes under Prohibition Act is not sufficient for passing order of detention and there must be further material to satisfy the condition that detainee is acting in any manner prejudicial to maintenance of public order.

The crucial aspect is the charge sheets have been filed in all the cases against the detenu and he was released on bail in all the cases. The orders of bail and the contents of the charge sheets were not considered by the sponsoring authority since they have not been placed before the said authority along with the other material which caused prejudice to the detenu in relation to making effective representation.

9. We have perused the judgment relied upon by the learned Counsel appearing for the writ petitioner and examined the facts situation in the present case in the light of the findings given by the Division Bench in the said decision and also the principles laid down by the Apex Court in various judgments governing the law relating to the preventive detention.

10. In the first place, we wish to state that the facts of the case before the Division Bench in the above cited case and the facts of the present case are not identical.

11. Nextly, we wish to state that the ratio emerging from some of the leading pronouncements of the Apex Court on the subject which are referred here in below does not enable us to accede to the contentions urged on behalf of the writ petitioner. In *Haradhan Saha Vs. The State of West Bengal and Others*, the Supreme Court held in clear terms, the fact that the police arrests a person and later enlarges him on bail and initiates steps to prosecute under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. It is further held that mere circumstances that a detention order is passed during the pendency of the prosecution will not violate the order. According to the Apex Court, "the order of detention is precautionary measure and 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." Similarly in *Ashok Kumar Vs. Delhi Administration and Others*, 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 nonexistent 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.

12. However, in *Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others*, it was held that if material and vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed, it would vitiate the subjective satisfaction rendering the detention order illegal.

13. In the case on hand, the entire material was placed before the detaining authority and the detaining authority while passing the order of detention was very much aware that in all cases charge sheets have been filed and that the detenu has also been released on bail. Therefore, it cannot be said that any material, which would influence the mind of the detaining authority was withheld. Presumably, the detaining authority passed the order on consideration of the entire material. In *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, . The Apex Court had categorically held that "even if the order refusing bail is not placed before the detaining authority it does not amount to suppression of relevant material and the question of non-application of mind and satisfaction being Impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody".

14. It is further held in the said decision that "the non supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity to make effective representation guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same. It is further held that only when the detaining authority has not only referred to, but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court. It was also further held that in 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."

15. As we have already pointed out, in the instant case, the facts that the charge sheets have been filed and that the detenu was released on bail in all cases was well within the knowledge of the detaining authority and the detaining authority after applying its mind to the said facts passed the order of detention. The said facts have also been reflected in the order of detention passed by the detaining authority. The law is well settled that even if in all cases the detenu has been acquitted, it may not weigh with the detaining authority if the detaining authority has reason to believe that the detenu had been indulging in unlawful and anti social activities, which are prejudicial to the public order and thus arrives at the subjective satisfaction that the individual has to be detained to safe guard the larger interests of the public. Therefore, in our view no facts which would have influenced the mind of the detaining authority one way or the other were withheld from being placed before the detaining authority and it cannot be said that the detention order is as a result of nonapplication of mind by the detaining authority.

16. The Division Bench of this Court in *Y. Gowtham Siddartha v. the Commissioner of Police and Additional District Magistrate, Vijayawada City* 1995 (2) ALT (CRL) 68 held that the detenu being on bail was a neutral circumstance, which would not affect the validity of the order of detention and that on the other hand had the detenu not been released on bail and remanded as under-trial prisoner, that might be a vital circumstance to be borne in mind.

17. As regards the fact that the report does not contain words that illicitly distilled liquor is injurious to health and unfit for human consumption, it cannot be said that no order of detention can be passed in the absence of any such expression used by the chemical analyst. If the report indicates that the illicitly distilled liquor is unfit for portable purpose it implies that consumption of such liquor would cause danger to human life and public health.

18. Here, we would like to refer the judgment of the Full Bench of this Court in *Doddi Sharada and Another Vs. Collector and District Magistrate and Others*, wherein it was clearly held that if the detaining authority is satisfied on material before it that such illicit liquor would cause danger to public health, it is a relevant ground for detention. Mere non mention of percentage of constituents by analyst, not a ground to vitiate detention.

19. To sum up, the relevant material indicating that the detenu had indulged in possession/sale/transport of illicit liquor on four occasions in close succession in one calendar year was placed before the detaining authority. In all the cases huge quantities of ID liquor was involved and was also seized by the raiding

parties. These factors are certainly of considerable importance for the detaining authority to make an order of detention. Various steps in the process of investigation and conducting the prosecution in a trial of criminal offence, have nothing to do with the consideration for passing detention order. The only issues to be considered are whether there was enough material before the detaining authority to arrive at the subjective satisfaction that the detainee was indulging in unlawful activities affecting the public order or likely to affect the public order and that whether any prejudice has been caused to the detainee on account of the non furnishing of any material which in fact prevented him from making an effective representation.

20. In the instant case, the facts viz. that the charge sheets have been filed and the detainee has been released on bail in all the cases were well within the knowledge of the detaining authority as well as the detainee and as a matter of fact, all the relevant documents have been furnished to the detainee. Therefore, it cannot at all be said that any prejudice has been caused to the detainee thereby preventing her from making any effective representation before the authorities concerned.

21. For the foregoing reasons, we are unable to accept any of the contentions urged by the writ petitioner and we consider that the writ petition has no merit at all and the same is liable to be dismissed.

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