ANDHRA PRADESH HIGH COURT
Bench: Justice U. Durga Prasad Rao and Justice Kiranmayee Mandava
Date Of Decision: 10 November, 2023

WRIT PETITION No.24885 of 2023

Thota Chittemma

Versus

The State Of Andhra Pradesh

Legislation:
Article 226 of the Constitution of India.
Section 3(1) and (2), 2(a) and (b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Gondas, Immoral Traffic Offenders, and Land Grabbers Act, 1986
Section 7(a), 8(e) of A.P. Prohibition Act, 1995.

Subject: Challenges the legality of the detention order under the A.P. Prevention of Dangerous Activities Act, 1986, especially considering the non-inclusion of bail information in the detention process.

Headnotes:

Habeas Corpus – Illegal Detention – Procedural Violations: Petitioner challenges detention order under Article 226, seeking release of detenue detained under A.P. Prevention of Dangerous Activities Act, 1986. Argues illegal detention due to non-inclusion of bail information. [Para 1, 5]

Detention Order Review – Bail Information Critical: Court emphasizes the necessity of including bail information in detention orders. Lack of such information, especially in cases of conditional bail, deemed a vital procedural violation. [Para 8]

Decision – Detention Order Set Aside: Court finds the detention order illegal due to procedural violations and sets it aside, ordering the release of the detenue unless required for other cases. [Para 9, 10]

Referred Cases:
- V. Muragesh v. Collector and District Magistrate, Chittoor (2013 Crl.L.J. 585)
- Durgam Subramanyam v. Government of A.P. (2013 (4) ALT 243 (D.B))
- State of U.P v. Kamal Kishore Saini ((1988) 1 SCC 287)
- M. Ahamedkutty vs Union Of India 1990 SCR (1) 209, 1990 SCC (2) 1
- Rushikesh Tanaji Bhoite v. State of Maharashtra (2012) 2 SCC 72

Representing Advocates:

For the Petitioner: Sri Kadiyam Neelakanteswara Rao.
For the Respondent: Learned Special Government Pleader representing the office of the learned Advocate General.

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ORDER: ***(per UDPR, J)***

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking writ of Habeas Corpus directing the 4th respondent to produce the detenue Bandam Nagamani, w/o.Tirumala Venkaiah, who is detained in the Central Prison, Rajamahendravaram and for a further order for release of the detenue forthwith.

2. The facts succinctly are thus:

(a) The 2nd respondent by his order in RC.No.MAGL1/314/2023, dated 26.05.2023, ordered detention of one Bandam Nagamani, w/o.Tirumala Venkaiah, under Section 3(1)&(2) r/w 2(a)&(b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Gondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, Act No.1 of 1986) on the ground that the detenue was involved in the following cases:

S.No.	Cr.No. & Sec. of Law	Date of offence
1	Cr.No.133 of 2021, u/s.7(a) r/w 8(e) of A.P. Prohibition Act, 1995 of Tiruvuru PS.	12.04.2020
2	Cr.No.100 of 2014, u/s.7(a) r/w 8(e) of A.P. Prohibition Act, 1995 of Gampalagudem PS.	20.05.2014
3	Cr.No.04 of 2016, u/s.7(a) r/w 8(e) of A.P. Prohibition Act, 1995 of Gampalagudem PS.	04.01.2016
4	Cr.No.182 of 2021, u/s.7(a) r/w 8(e) of A.P. Prohibition Act, 1995 of Visannapeta PS.	27.04.2020
5	Cr.No.125 of 2022, u/s.7(a) r/w 8(e) of A.P. Prohibition Act, 1995 of SEB Station, Tiruvuru.	27.04.2022
6	Cr.No.249 of 2022, u/s.7(a) r/w 8(e) of A.P. Prohibition Act, 1995 of SEB Station, Tiruvuru.	17.10.2022

In the detention order it is also stated that she is habitually indulging in 'Boot-Leggar' activities, which are prejudicial to the maintenance of public health and public order.

(b) Subsequently, on the recommendation of the Advisory Board, her detention was confirmed by virtue of G.O.Rt.No.1547, General Administration (SC.I) Department, dated 03.08.2023. Hence, the writ petition.

3. Learned Special Government Pleader representing the office of the learned Advocate General filed counter and opposed the writ petition.

4. Heard learned counsel for petitioner, Sri Kadiyam Neelakanteswara Rao and learned Special Government Pleader representing the office of the learned Advocate General.

5. (a) The main plank of argument of learned counsel for petitioner is di-pronged. Firstly, learned counsel for petitioner would argue that in four out of six crimes, which were considered for ordering detention, the detenue was already enlarged on bail by the concerned Judicial Magistrate of First Class. However, sponsoring authority have not placed the concerned bail applications and bail orders along with other materials before the 2nd respondent for making an objective assessment as to whether or not the detention of the detenue was required. Due to such crucial procedural violation, the detention *per se* became illegal.

(b) Nextly, learned counsel argued that the aforesaid copies of the bail applications and bail orders were not served on the detenue either so as to make an effective representation before the advisory board and thereby, she was deprived of an opportunity of making effective representation and hence, the detention became illegal.

6. Learned Special Government Pleader refuted the above contentions and argued that in two out of the six cases i.e., in Crime No.133 of 2021 of Tiruvuru PS and Crime No.182 of 2021 of Visannapeta PS, the detenue was not arrested by the concerned police but notice under Section 41-A Cr.P.C. was issued and copies of those notices were filed by the sponsoring authority before the detention authority and therefore, there was no violation of the procedure in that regard. With regard to the remaining four cases, while admitting that the detenue was enlarged on bail even prior to the date of detention, however, learned Special Government Pleader would argue that such non-submission of the bail orders to the detention authority will not render detention illegal. He placed reliance on the decision of ***Sunila Jain v. Union of India***[1]. He also argued that since the detenue was on bail and at large by the date of passing of the detention order, non-supply of the bail applications and bail orders is of no consequence as she can procure them by herself. He, thus prayed to dismiss the writ petition.

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7. The point for consideration is whether there are merits in the writ petition to allow?

8. We have cogitated upon the grounds raised by the learned counsel for petitioner. The law on the two grounds raised by the learned counsel for petitioner is no more *res integra* and it has been decided in a number of decisions. In fact in earlier writ petition No.17210 of 2022, a Division Bench of this Court, (to which UDPR,J is one of the member), considering the law in this regard held that the detention was illegal. In the said judgment, so far as the argument of the non-furnishing of the copies of the bail applications and bail orders to the detaining authority as well as to the detenue, it was

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[1] MANU/SC/8053/2006 = (2006) 3 SCC 321

held that it is a vital procedural violation and relevant portion of the said order is extracted hereunder:

"8. **Point**: We gave our anxious consideration to the above respective arguments. The primary argument of the petitioner is about the procedural violation. True is that as submitted by learned Special Government Pleader, a person on bail is neither immuned nor insulated from preventive detention. Still, the detaining authority upon considering the material and other facts can form an opinion that the chances of misuse of bail by such person and his repeating similar offences cannot be ignored, order for preventive detention. There is no demur on this aspect. However, the crux of the petitioner"s argument is not about the lack of power of the detaining authority to order preventive detention against a person who is on bail. On the other hand, the argument of the learned counsel for petitioner is that in almost all the 11 crimes which were considered for ordering detention, the detenue was granted bail and the Sponsoring Authority have not placed the materials relating to bail applications and bail orders before the detaining authority for his consideration. Had such information was brought to the notice of the latter, perhaps considering that conditional bails were granted in favour of detenue and that his movement was already restricted by the judicial orders, the detaining authority might not order preventive detention.

We find considerable force in the above argument. Preventive detention under Article 22 of the Constitution of India is an exception to Article 21. It being not a punitive detention, the law cautioned the detaining authority to scrupulously follow the safeguards and procedures before ordering preventive detention. One of such procedural safeguards is that if the detenue was already granted conditional bails in the crimes which were taken as a ground for ordering preventive detention, it will be the solemn duty of the Sponsoring Authority to bring the said fact to the notice of the Detaining Authority by placing before it the bail applications and bail orders for its consideration. Failure on the part of the Sponsoring Authority to do so and also the failure on the part of the Detaining Authority to consider aforesaid material on being placed before it, render the detention per se illegal. The law on this aspect is no more res integra. In **Vasanthu Sumalatha**[2] (2 supra), a Division Bench of the common High Court of Andhra Pradesh has observed thus:

"43. If the bail order, which is a vital material, is not considered, the satisfaction of the detaining authority itself would be impaired. (V. Muragesh v. Collector and District Magistrate, Chittoor (2013 Crl.L.J. 585); Durgam Subramanyam v. Government of A.P. (2013 (4) ALT 243 (D.B); State of U.P v. Kamal Kishore Saini ((1988) 1 SCC 287; M. Ahamedkutty vs Union Of India 1990 SCR (1) 209, 1990 SCC (2) 1. Nonplacing and non-consideration of material, as vital as the bail order, vitiates the subjective decision of the

[2] 2015 SCC Online Hyd 790 = (2016) 1 ALT 738 (DB)

detaining authority, and the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority. (Rushikesh Tanaji Bhoite v. State of Maharashtra (2012) 2 SCC 72). Failure of the sponsoring authority to place the conditional orders, granting anticipatory bail/bail, before the detaining authority is fatal as it is a vital material which would have weighed with the detaining authority at the time of passing the detention order. [Durgam Subramanyam"s case (supra). 54. Neither the order nor the grounds of detention refer either to the conditional or the unconditional orders of bail granted in favour of the detenus. As noted hereinabove failure of the detaining authority to consider the orders granting conditional bail would vitiate the orders of detention. ..xxx…"

9. It should be noted that in the above decision, the judgment in Sunila Jain's case (1st supra) relied upon by the learned Special Government Pleader was distinguished on facts. In Sunila Jain, copy of the order granting bail and order of remand has been furnished to the detenue. In that context, it was observed by the Hon"ble Apex Court that non-furnishing of a copy of the application of bail cannot be said to be a ground and that all the documents placed before the detaining authority are not required to be supplied and only relevant and vital documents are required to be supplied. The said judgment was distinguished in Vasanthu Sumalatha case (2 supra) as follows:

"53. Unlike in Sunila Jain (supra) where a copy of bail application, for an offence which was bailable, was not furnished and a copy of the order granting bail and the order of the remand were furnished to the detenu, in the present case the orders granting conditional bail were neither considered by the detaining authority nor were copies thereof furnished to the detenu. The conditional orders of bail restricted the movement of the detenus and required them to appear before the officer concerned periodically. If these conditional orders of bail had been brought to his notice, it may well have resulted in the detaining authority arriving at the subjective satisfaction that the detention of the detenus were unnecessary.

Reliance placed by the Learned Advocate-General on Sunila Jain (supra) is, therefore, misplaced."

In Gattu Kavitha case (1 supra), another Division Bench of the common High Court of Telangana & A.P. expressed similar view as follows:

"14. From the ratio in the decision, it is clear that non-supply of conditional bail orders by the sponsoring authority to the detaining authority and failure to refer to the same in the order of detention and grounds of detention, and non- consideration of such vital and relevant material, invalidates the detention order. The law laid down in Vasanthu Sumalatha v. State of Andhra Pradesh, 2016 (2) ALD (Crl.) 156, which was recently affirmed by us in W.P.No.4805/2016 to the effect that failure to supply documents relied upon by the detaining authority would result in denying an opportunity to make an effective representation as guaranteed under Article 22(5) of the Constitution of India, would squarely apply to the instant case."

10. In the light of the above jurisprudence, when facts of the instant case are perused, in the counter filed by the 2nd respondent, it has been specifically admitted and mentioned that in the above 11 cases which were taken for

consideration, the detenue was granted bail in almost all the cases. However, when we perused the detention order and grounds of the detention, there was no reference about granting of conditional bails in the concerned crimes. Thus, it is obvious that the Sponsoring Authority has not placed the relevant material i.e., bail applications and bail orders before the Detaining Authority and there was no effective consideration of this fact. Further, along with the counter the 2nd respondent enclosed the material papers from page 58 to 174 which were said to be furnished to the detenue after detention. However, these material papers do not contain the bail orders. Thus, in essence, the conditional bail orders were neither considered nor furnished to the detenue, meaning thereby, the detention became illegal and unsustainable. On this ground alone, the detention order is liable to be set aside."

9. Needless to emphasize that the decision cited by the learned Special Government Pleader was also considered and distinguished. The above decision applies with all its fours to the case on hand as in this case also admittedly, the copies of bail applications and bail orders were supplied neither to the detention authority nor to the detenue. Thereby, as rightly submitted by the learned counsel for petitioner, the detention *per se* became illegal.

10. Accordingly, this writ petition is allowed and the detention order passed by the 2nd respondent vide RC.No.MAGL-1/314/2023, dated 26.05.2023, is hereby set aside and the detenue namely Bandam Nagamani, w/o.Tirumala Venkaiah, is directed to be released forthwith by the respondents, if she is not required in any other cases. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.