

**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**AND**

**THE HON'BLE SRI JUSTICE V.SRINIVAS**

**I.A.NO.1 OF 2023**  
**IN/AND**  
**WRIT PETITION No.2759 of 2023**

**ORDER:** *(per Hon'ble Sri Justice V.Srinivas)*

Initially, in this writ petition, the petitioner challenged the order of detention of her husband Bheesannagari Ramanjaneyulu, S/o.Pedda Bhesanna, aged 35 years, vide REV-CSECOPDL(PRC)/3/2022-SA(C1-COLLKRNL, dt.28.11.2022 passed by the 2<sup>nd</sup> respondent-The Collector & District Magistrate, Kurnool District and prays to direct the respondent authorities to set the detinue at liberty forthwith.

2. Since the said detention order passed by the 2<sup>nd</sup> respondent was confirmed by the 1<sup>st</sup> respondent vide G.O.Rt.No.227 General Administration (SC.I) Department, dated 02.02.2023, then the petitioner filed I.A.No.1 of 2023 to amend the prayer of the writ petition as "to issue writ order or direction more particularly one in the nature of writ of Habeas Corpus under Article 226 of the Constitution of India directing the 4<sup>th</sup> respondent to produce the detinue viz., Bheesannagari Ramanjaneyulu, S/o.Pedda Bhesanna, who is now detained in Central Prison, Kadapa, before this Court and order for his release forthwith, after declaring his detention vide proceedings

REV-CSECOPDL(PRC)/3/2022-SA(C1-COLLKRNL, dt.28.11.2022 passed by the 2<sup>nd</sup> respondent which was confirmed by the 1<sup>st</sup> respondent vide G.O.Rt.No.227 General Administration (SC.I) Department, dated 02.02.2023 as illegal and unconstitutional and pass such other order or orders which this Hon'ble Court may deem fit and proper in the circumstances of the case".

3. In view of the confirmation orders and same is challenged in this writ petition by filing application vide I.A.No.1 of 2023, thus, the same is allowed and the prayer of the writ petition is ordered to be amended as prayed for.

4. The Collector and District Magistrate, Kurnool District, while categorizing the detenue as "Bootlegger and Goonda" within the definition of Section 3(2) r/w.3(1) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act 1 of 1986') and passed the impugned order of detention. The same was confirmed by the 1<sup>st</sup> Respondent-State.

5. Heard Sri D.Purna Chandra Reddy, learned counsel for the petitioner and Sri Syed Khader Mastan, learned counsel attached to the office of learned Additional Advocate General for the respondents.

6. Learned counsel for the petitioner submits that the order of detention is passed basing on the five cases and in all most all the cases the detenue was granted bails, but the sponsoring authority suppressed the said information before the detaining authority; that the penal laws are sufficient to deal with the situation and invoking the provisions of preventive detention is completely unnecessary.

7. He further submits that the detaining authority did not supply the material relied on by them within the stipulated period of five days and only the order and grounds of detention along with material supplied after about three weeks, but the subsequent developments such as approval and confirmation of the order of preventive detention were not even informed to the detenue, thereby, it vitiates the entire order of preventive detention. He relied upon judgments of Hon'ble Supreme Court and this Court reported in ***Rekha v. State of Tamilnadu<sup>1</sup> and W.P.No.5469 of 2022***. Copy of the said orders placed on record.

8. It is brought to the notice of this Court by the learned counsel for the writ petitioner that the issue in the present Writ Petition is squarely covered by the order of this Court in

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<sup>1</sup> 2011 (5) SCC 244

W.P.No.30649 of 2022, dated 06.03.2023. A copy of the said order is placed on record.

9. On the other hand, reiterating the averments made in the counter affidavit filed by the respondents, it is submitted by Sri Syed Khader Mastan, learned counsel attached to the office of Additional Advocate General that having regard to the gravity of the offences, the orders impugned in the Writ Petition do not warrant any interference of this Court under Article 226 of the Constitution of India.

10. A perusal of the order dated 06.03.2023 passed by this Court in W.P.No.30649 of 2022 clearly demonstrates that all the issues that have been raised in the present Writ Petition were also raised in the aforesaid Writ Petition and this Court discussed the law laid down in ***Gattu Kavitha v. State of Telangana***<sup>2</sup> case and ***Rushikesh Thanaji Bhoite v. State of Maharashtra***<sup>3</sup> case and three judge Bench judgment of Apex Court in ***Rekha v. State of Tamilnadu***<sup>4</sup> case, in which the Apex Court held as follows:

*“The detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority*

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<sup>2</sup> 2017(1) ALD CrI.224

<sup>3</sup> (2012) 2 SCC 72

<sup>4</sup>2011 (5) SCC 244

*passed the detention order under the impression that no bail application of the accused was pending, but in similar cases bail had been granted by the courts. We have already stated above that no details of alleged similar cases have been given. Hence, the detention order in question cannot be sustained”.*

11. After considering the law laid down above, W.P.No.30649 of 2022 was allowed granting relief in favour of the petitioner therein.

12. In **Syed Sabeena v. The State of Telangana and others**<sup>5</sup> at Para No.17 it is held by the APEX Court that: “In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.”

13. In the present case also the detaining authority has not considered the vital aspect that the detenue was granted bail in all most all the cases and the said fact was not disputed by the respondents in their counter. Moreso, it is the contention of the petitioner that due to non furnishing of the bail order and other material to the detenue, he could not submit the effective representation before the concerned authorities, resulting, the

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<sup>5</sup> CrI.A.No.909 of 2022 (SLP(CrI).No.4283 of 2022) (Supreme Court of India)

State could not evaluate his case and detention order was passed which is unwarranted.

14. Similarly, the fact that the detenue was in judicial custody at the time of passing detention order is not considered and no reasons are assigned that he will commit further crimes. If the detenue is in judicial custody, the State intended to pass detention order, it should strictly follow the triple test i.e., the requirement test laid down in the case of **Kamarunnisa v Union of India**<sup>6</sup> in which it was held “*an order of detention can be validly passed against a person in custody (1) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. This court notices that the order of detention did not meet this triple test and that there is no material*”. In the present case also, the law laid down in Karimunna’s case has not been considered. Furthermore, it is not clear how the authorities concluded that the ordinary law is not sufficient to stop the alleged crimes. It is clear that the penal laws are sufficient to deal with the situation mentioned in

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<sup>6</sup> (1991) 1 SCC 128

the order of detention and that invoking provisions of preventive detention is completely unnecessary as settled by this Court in several judgments. This Court could not find that the order of detention refers to clear material to either substantiate or justify the said allegation that the detainee is a 'Bootlegger and Goonda'.

15. For the aforesaid reasons, this Writ Petition is allowed, setting aside the order of detention passed by the 2<sup>nd</sup> respondent vide proceedings in REV-CSECOPDL(PRC)/3/2022-SA(C1-COLLKRNL, dt.28.11.2022 as confirmed by the State Government vide G.O.Rt.No.227 General Administration (SC.I) Department, dated 02.02.2023. Consequently, the detainee namely Bheesannagari Ramanjaneyulu, S/o.Pedda Bhesanna, aged 35 years, is directed to be released forthwith by the respondents if the detainee is not required in any other cases. No orders as to costs.

16. Miscellaneous petitions pending if any, stand closed.

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**JUSTICE D.V.S.S.SOMAYAJULU**

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**JUSTICE V.SRINIVAS**

Date: .06.2023  
Issue C.C. today  
B/o.  
krs

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