IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION NO: 15648 OF 2023

Between:

Lalitha Bai, W/o. Rthmavath Bhamla Naik, Age 30 years, R/o. 5/7, Midde Thanda Village, Thuggali Mandal, Kurnool District.

...PETITIONER

AND

1. The State of Andhra Pradesh, Represented by its Chief Secretary, Secretariat Buildings, Amaravathi at Velagapudi, Guntur District.
2. The Collector & District Magistrate, Anantapuramu District.
3. The Superintendent of Police, Anantapuramu District.
4. The Superintendent, Central Prison, Kadapa, YSR Kadapa District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased 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 4th respondent to produce Ramavath Bhamla Naik, S/o. Ramavath Setti Naik who is now detained in Central Prison, Kadapa, YSR District before this Honble Court and he may be ordered to be released forthwith after declaring his detention vide proceedings RC.NO.MC1/1125/2023, dt.08.05.2023, passed by the 2nd respondent which was confirmed by the 1st respondent vide G.O.Rt.No.1254 General Administration **(SPL.[LAW AND ORDER])** Department, dt26.06.2023 as illegal and unconstitutional.

(Main prayer is amended/substituted as per Court Order dated 29.08.2023 vide I.A.No.1 of 2023 in WP.No.15648 of 2023)

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to order amendment of the prayer in W.P.No.15648 of 2023 as "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 4th respondent to produce Ramavath Bhamla Naik, S/o Ramavath Setti Naik who is now detained in Central Prison, Kadapa, YSR District before this Hon'ble Court and he may be ordered to be released forthwith after declaring his detention vide proceedings RC.NO.MC1/1125/2023, dt.08.05.2023 passed by the 2nd respondent which was confirmed by the 1st respondent vide G.O.Rt.No.1254 General Administration **(SPL.[LAW AND ORDER])** Department, dt.26.06.2023 as illegal and un constitutional and pass such other order or orders which this Hon'ble Court may deem fit and proper in the circumstances of the case" **instead of** "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 4th respondent to produce Ramavath Bhamla Naik, S/o Ramavath Setti Naik who is now detained in Central Prison, Kadapa, YSR District before this Hon'ble Court and he may be ordered to be released forthwith after declaring his detention vide proceedings RC.NO.MC1/1125/2023, dt.08.05.2023 passed by the 2nd respondent as illegal and un constitutional.

Counsel for the Petitioner: SRI. D.PURNACHANDRA REDDY

Counsel for the Respondents: SRI SYED KHADAR MASTAN ASSISTANT GP FOR ADDITIONAL ADVOCATE GENERAL

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

AND

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION.No.15648 of 2023

ORDER:- ***(Per Hon'ble Sri Justice Tarlada Rajasekhar Rao)***

The present writ petition of *Habeas Corpus* is filed by the wife of the detenu, to declare the detention order issued *vide* proceedings dated 08.05.2023 and the consequential confirmation order dated 26.06.2023, as illegal and unconstitutional and to direct the respondents to set the detenu at liberty forthwith, as the said order is violative of Article-21 of the Constitution of India.

2. Heard learned counsel for the petitioner and Sri Syed Khadar Mastan, learned Assistant Government Pleader attached to the office of learned Additional Advocate General.

3. The 2nd respondent, who is the District Collector-cum-District Magistrate, by exercising powers conferred under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Hereinafter for short "the Act") detained the detenu, as he was indulged in clandestine procurement, manufacture, possession, transport and sale of illicitly distilled liquor, which is an offence punishable under Section 2(b) of the Act. As such the detenu

comes under the definition of "Bootlegger", as defined in Section 2(b) of the Act.

4. The detenu was involved in three crimes *vide* Crime No. 265 of 2020 dated 18.11.2020, Crime No. 45 of 2021, dated 23.01.2021 and Crime No.04 of 2023, dated 17.01.2023 all the said offences are punishable under Section 7(a) r/w Section 8(E) of the Andhra Pradesh Prohibition (Amendment) Act,2020. Illicitly distilled liquor was seized and was sent to chemical examination to Prohibition and Excise Laboratory, it is opined that the sample is illicitly distilled liquor unfit for human consumption and injurious to health *vide* proceedings C.E.No.152/2023, dated 20.02.2023. Accordingly, a charge sheet was filed against the accused before the Judicial Magistrate of First Class.

5. It is asserted in grounds of detention that the illicitly distilled liquor sold by the detenu is injurious to health, thereby effected the public health and the said liquor was being manufactured by adopting crude and unscientific methods, it contains impurities including fusel oil (fuse) and also it is acetic in nature and it also causes Liver diseases, CNS depression, Metabolic Acidosis, Visual Symptoms like decreased visual acuity, Haemorrhagic Pancreatitis, Convlsions and Acute Renal failure, Coma/Hypertension etc.,

6. It was also asserted that it takes long time to prosecute the detenu and in the meanwhile, the detenu is causing widespread danger

to public health and creating a feeling of insecurity among the general public of that locality and if the activities are allowed unhindered and unchecked, there is every danger of leading to liquor tragedies costing many lives of poor people. The said possession and sale of illicitly distilled liquor is found to be most convenient to get easy and fast money and huge profits with small investments. Therefore, the said activities clearly fall under "Bootlegger", as defined under Section 2(b) of the Act and it is a fit case to exercise powers conferred under Section 3(2) of the Act. Accordingly, passed the detention order by detaining the detenu.

7. The said order has been assailed in the present writ petition on the ground that the detaining authority inspite of knowing that detainee is a villager and an agriculturist and that he cannot understand anything which is in English language, furnished all the materials such as copies of F.I.R., remand report, charge sheet, bail applications and bail orders in English language. Therefore, it is submitted that failure to supply the material relied on by the detaining authority for passing the order of preventive detention in the language known to the detenu vitiates the entire order of preventive detention. The detaining authority has not supplied the grounds of detention order, within a period of five days as contemplated under the Act and the said material was supplied, which was relied on by the detaining authority, after about three (3) weeks.

8. There is no proximity of link between the second and third grounds, as such it cannot be said that the activites of the detenu are prejudicial to the maintenance of public order and there is no such allegation that he violated any bail conditions imposed by the Judicial Magistrate of First Class, while grating bail. When it is the situation, invoking the provisions of preventive detention is completely not required and the subjective satisfaction arrived at by the detaining authority is not based on any reasonable grounds. Hence, prayed to set aside the detention order and the consequential confirmation order and to set the detenu at liberty forthwith.

9. Demurrer/repealing the contentions raised by the petitioner, learned Assistant Government Pleader would submit that the detaining authority has passed the detention order to the subjective satisfaction, as the petitioner was involved in manufacturing, selling and possessing illicitly distilled liquor and the same was sent to the Chemical Examiner, Prohibition and Excise and he opined that the said distilled liquor is unfit for human consumption and affects the human body and basing upon the said report the detaining authority has exercised its power and also would submit that the High Court under Article-226 of the Constitution of India do not sit in an appeal against the order of preventive detention but the Court is only to see whether the formalities as enjoined by Article 22(5) of the Constitution of India had been

complied with by the detaining authority and if so done, the Court cannot examine the material before it and find that the detaining authority did not even satisfy on the material before it and detained the detenu and the Court cannot question the sufficiency of the grounds of detention to record the subjective satisfaction of the authority as pointed out in ***Ashok Kumar v. Delhi Administration and others***[1] and also would submit that Hon'ble Apex Court in similar circumstances in ***Pesala Nookaraju v. The Government of Andhra Pradesh and others,*** arising out of S.L.P.(Criminal) No. 9492 of 2023, held that, when it is specifically stated by the Chemical Examiner for Prohibition and Excise laboratory that seized liquor from the detenu and consumption of the same by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order and the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record. It is sufficient to arrive at the subjective satisfaction of the detaining authority and no Court shall interfere in such cases. Hence, prayed to dismiss the writ petition.

10. In the present case admittedly, the report was given by the Chemical Examiner for Prohibition and Excise laboratory, it alludes that

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[1] (1982) 2 SCC 403

the said distilled liquor is unfit for human consumption and injurious to health. It is the contention in the present writ petition that the detaining authority has not supplied the material, which is in vernacular language, which is known to the detainee and therefore, it amounts to violation of Article 22(5) of the Constitution of India. Therefore, prayed to set aside the detention order.

11. Learned counsel for the respondents further submits that the detaining authority has supplied the detention order, which is in Telugu. Further it was not denied or it was stated in the counter-affidavit that the other material was supplied in vernacular language i.e., Telugu to the detainee.

12. It is detenu's case that he knows Telugu language only and he has been supplied with the documents which is in English but not Telugu and, therefore, non-furnishing of documents relevant to material particulars and facts in the language known to the detenu, has deprived him of his right to make effective representation against his detention and, therefore, the impugned order of detention is to be held illegal and would stand vitiated.

13. The contention raised by the detenu was that he could not understand the contents of those documents, since they were in English and therefore there was clear breach of the mandate contained under Article 22(5) of the Constitution of India and also submits that statutory

right is provided to him under the act to submit his representation to the detaining authority or to the government or to the advisory board established under section 9 of the Act, and if he is not aware of contents of the document he couldn't make effective representations to the authorities and it is contrary to Article 22 (5) of the Constitution of India and the order of detention would vitiate.

14. The translated copy of the material was not furnished to the detenu on account of which he was seriously prejudiced in as much as he was not able to give effective representation to the authorities. Therefore, non-furnishing of the above materials would obviously deprive him of his opportunity to make effective representation and hence, we are of the opinion that the detention order is liable to be quashed on this ground. It has to be remembered that a detenu, while he is undergoing preventive detention is obviously denuded of his fundamental right to freedom and liberty postulated under the Constitution. Undoubtedly the power to detain a person under the prevention detention laws is hedged in by various safeguards set out in Articles 21 and 22. The Detaining Authority cannot refuse to give copies of the relevant documents or the translations thereof in vernacular to the detenu concerned. We are fortified on this proposition of law with the judgment of the Hon'ble Apex Court reported in ***Pramod Singla v. Union of India and others***[2], wherein, it is held that in cases where

[2] 2023 SCC Online SC 374

illegible documents have been supplied to the detenue, a grave prejudice is caused to the detenue in availing his right to send a representation to the relevant authorities, because the detenue, while submitting his representation, does not have clarity on the grounds of his or her detention. In such a circumstance, the relief under Article 22(5) of the Constitution of India and the relevant statutory provisions allowing for submitting a representation are vitiated, since no man can defend himself against an unknown threat.

15. In the case of ***Harikisan v. The State Of Maharashtra & Ors.***[3], this Court held that in cases of preventive detention, as per the principles enshrined under Article 22(5) of the Constitution Of India, the detaining authority must explain the grounds of detention to the detenue, and must provide the material in support of the same and in the language understood by the detenue. The relevant Paragraph of the said judgment is being reproduced herein:

> *"...The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of Court proceedings concerning him and other persons who were 7 (1962) Supp. 2 SCR 918 alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order..."*

16. At the cost of repetition, we find it important to state that in cases of preventive detention, every procedural irregularity, keeping in mind the principles of Article 21 and Article 22(5) of the Constitution of India,

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[3] (1962) Supp. 2 SCR 918

must accrue to the benefit of the detenu. In the present case at hand, the detenu herein has been supplied with documents in a foreign language. It is also important to note that these are the very same documents that the authorities relied upon to detain the detenu herein.

17. Resultantly, the Writ Petition is allowed. The impugned order of preventive detention is set aside. Respondents are hereby directed to release the detenu forthwith, unless he is required in connection with any other crime. There shall be no order as to costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

Sd/- S.SRINIVASA PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Secretary, Secretariat Buildings, Amaravathi at Velagapudi, Guntur District.
2. The Collector & District Magistrate, Anantapuramu District.
3. The Superintendent of Police, Anantapuramu District.
4. The Superintendent, Central Prison, Kadapa, YSR Kadapa District.

(SPEED POST)

5. One CC to Sri. D. Purnachandra Reddy, Advocate [OPUC]
6. Two CCs to The Additional Advocate General, High Court of Andhra Pradesh [OUT]
7. Two CD Copies.

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HIGH COURT

DATED:26/09/2023

ORDER

WP.No.15648 of 2023

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ALLOWING THE WRIT PETITION WITHOUT COSTS