

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA

PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.32982 of 2014

BETWEEN

K. Venkata Lakshmi

... PETITIONER

AND

The State of Andhra Pradesh, Rep. by its Chief Secretary (Department of General Administration), A.P. Secretariat Building, Hyderabad and others.

...RESPONDENTS

The Court made the following:

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ORDER:

Heard.

2. The wife of the detenu has filed this writ petition questioning the detention order passed by the Collector & District Magistrate, respondent No.2, dated 06.08.2014, as confirmed by the Government, respondent No.1, under G.O.Rt.No.3135, General Administration (Law & Order) Department dated 13.09.2014. The said detention order was passed against the detenu under the A.P. Prevention of Dangerous Activities

of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'AP Act 1 of 1986') on the ground that the detenu is a bootlegger, as defined under Section 2(b) of AP Act 1 of 1986 and that his activities are injurious to the health of general public and prejudicial to the maintenance of public order.

3. The detention order refers to five crimes registered against the detenu and all the said crimes relate to dealing with illicitly distilled liquor including its supply under A.P. Prohibition (Amended) Act, 1997. The order of detention is challenged by the petitioner on various grounds, as set out in paragraph 5 of the affidavit. However, learned counsel for the petitioner has pressed ground No.5(v) at the time of hearing and contended that the offences complained against the detenu are such, which can be dealt with under ordinary law of the land and as such, taking recourse to the provisions of AP Act 1 of 1986 is not warranted on the facts and circumstances of the case.

4. Learned counsel for the petitioner has placed strong reliance upon decisions of the Supreme Court in **MUNAGALA YADAMMA v. STATE OF A.P.** ^[1] and **REKHA v. STATE OF TAMIL NADU** ^[2] as well as decision of the learned single judge of this Court in **SHEELA BAI v. STATE OF ANDHRA PRADESH** ^[3].

5. Learned Advocate General, on the other hand, placed strong reliance upon the detention order itself and contends that the detaining authority was fully conscious of the cases registered against the detenu and that he was released on bail and then continuing with the same illegal activities. Learned Advocate General also contended that the detaining authority has arrived at subjective satisfaction on the basis of the material placed before it and has also taken into consideration the specific contention that the ordinary law of the land has been unable to curb the illegal activities.

6. Respondent No.2 filed counter affidavit wherein it is stated towards end of para 5 that in order to prevent the detenu from indulging himself in committing similar offences in future,

the detaining authority has passed the impugned order of detention.

It is also stated in paras 6 and 8 that though five cases are registered against the detenu during the excise years 2013-14 and 2014-15,

the detenu did not mend his illegal acts and as his activities continued to be prejudicial to the maintenance of public order, in order to curb the said illegal activities the order of detention was required to be passed. It is further stated in para 9 that though the detenu was enlarged on bail, he once again indulged in similar offences.

Hence, it cannot be said that the order of detention was passed without invoking the ordinary law of the land.

7. The point for consideration, therefore, is whether the impugned order of detention is justified in view of the fact that five crimes are already registered against the detenu under ordinary law of the land?

8. The contention of the learned counsel for the petitioner is clearly based upon the decision of the Supreme Court in **MUNAGALA YADAMMA's** case (1 supra) and **REKHA's** case (2 supra).

MUNAGALA YADAMMA's case (1 supra), in turn, refers and relies upon ratio in **REKHA's** case (2 supra) wherein it was held that when the ordinary law of the land was sufficient to deal with the situation, the recourse to the preventive detention law was illegal. The aforesaid ratio has, however, to be understood in the light of the facts of that case when the detention order, which was in question in that case,

had alleged that the detenu was collecting expired drugs from the medical shops and after tampering with the original labels, printed fresh labels showing them as non-expired drugs, which was injurious to public health. The said order of detention was examined in detail by the Supreme Court and it was found that the detention order contains *ipse dixit* regarding alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. It was also found by the Supreme Court that the said detenu was in custody and had not moved any bail application. Hence, it was found that the detaining authority was not even aware as to whether bail applications of the detenu are pending. In the background of those facts,

the Supreme Court came to consider the Constitution Bench Judgment in **HARADHAN SAHA v. STATE OF WB** [(1975) 3 SCC 198] which upheld the power of detention even when a person is tried in a criminal court for commission of criminal offence.

9. In my humble opinion, the ratio of the said decision, therefore, has to be appreciated from the background facts of that case.

The decision in **MUNAGALA YADAMMA's** case (1 supra) followed the decision in **REKHA's** case (2 supra). It is, however, not clear whether the factual aspects as found in **REKHA's** case (2 supra) were also found in **MUNAGALA YADAMMA's** case (1 supra).

Similarly, the learned Single Judge of this Court in **SHEELA BAI's** case (3 supra) has followed the decision of **REKHA's** case (2 supra) and **MUNAGALA YADAMMA's** case (1 supra) and quashed the detention order on the ground that ordinary law of the land is sufficient to deal with the detenu and detention order was not justified.

10. Learned Advocate General, however, placed reliance upon Full Bench Judgment of this Court in **DODDI SHARADA v. COLLECTOR AND DISTRICT MAGISTRATE**^[4]. The said decision, however, holds that ‘... *mere production, distribution or sale of illicit liquor may not be a relevant ground for a detaining authority to detain a person, but if he is satisfied on the basis of material placed before him that such illicit liquor would cause danger to public health, then, in our view the ground would be relevant*’.

11. Another later decision of the Supreme Court is also placed on record in **G. REDDEIAH v. GOVERNMENT OF A.P.**^[5] wherein similar detention order was examined by the Hon'ble Supreme Court where the detenu was found involved in eight crimes. Identical contention with regard to the recourse to ordinary law and the resorting to detention order by the detaining authority was also raised and it was held in paras 21 to 23 as follows.

“21. The grounds of detention also show that the Detaining Authority, after scrutinising all the details including various orders of arrest and release, bail on various dates and noting that he is habitually indulging in trespass in forest area, illicit cutting, felling, smuggling and transporting red-sanders from the reserved forest owned by the

State, arrived at a definite conclusion that the provisions of normal law were not sufficient in ordinary course to deal firmly because of his habitual nature and after satisfying all aspects including the fact that the detenu was in jail from 09.10.2010 to 10.11.2010 and the factum of release from the jail in 4 criminal cases, passed an order of detention with a view to prevent him from further indulging into such offences.

22. In a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the Detaining Authority is subjectively satisfied about the various offences labelled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass appropriate order under Section 3 of the 1986 Act by fulfilling the conditions stated therein. We have already concluded that

there is no infirmity either in the reasonings of the Detaining Authority or procedure followed by it. We are also satisfied that the detenu was afforded adequate opportunity at every stage and there is no violation of any of the safeguards. In these circumstances, we reject the contention raised by learned senior counsel for the appellant.

23. Though an attempt was made to nullify the order of detention by drawing our attention to the latest decision of this Court reported in ***Rekha v. State of Tamil Nadu*** [(2011) 1 5 SCC 244], on going through the factual position and orders therein and in view of enormous activities of the detenu violating various provisions of IPC, the A.P. Act and the Rules, continuous and habituality in pursuing the same type of offences, damaging the wealth of the nation and taking note of the abundant factual details as available in the grounds of detention and also of the fact that all the procedures and statutory safeguards have been fully complied with by the Detaining Authority, we are of the view that the said decision is not applicable to the case on hand. On the other hand, we fully agree with the reasoning of the Detaining Authority as approved by the Government and upheld by the High Court.”

The legal proposition as settled by the aforesaid decisions is required to be followed, on the facts of each case, the satisfaction of the detaining authority as recorded in the order of detention is also required to be examined and as held by the Supreme Court in **REKHA's** case (2 supra), subjective satisfaction by the detaining authority ought to be evident from the order itself.

12. If we examine the order of detention in the present case, the detaining authority has taken into consideration the bail petitions and bail orders in all the five crimes registered against the detenu as is specifically mentioned in the order of detention. It was also mentioned that since the cases booked

against the detenu under the A.P. Prohibition (Amended) Act, 1997 will take a long time in order to curb his illegal, clandestine and injurious activities, which are all adversely affecting the public health and public, the order of detention is required to be made to prevent the detenu from further indulging in such dangerous activities. The detenu having been found to be involved in five crimes, which are committed in close proximity with each other between 21.10.2013 to 03.06.2014, further show that though the detenu absconded on seeing the raid party with respect to Cr.Nos.623 and 812 of 2013-2014, he was produced before the concerned Magistrate through P.T. Warrant on 21.12.2013 and later the detenu was enlarged on bail on 06.01.2014. With respect to Cr.No.651 of 2013-2014, the detenu was arrested, produced before the concerned Magistrate and remanded to judicial custody and thereafter, the detenu was enlarged on bail on 06.11.2013.

With respect to Cr.No.822 of 2013-14, the detenu was arrested on 09.12.2013 and he was enlarged on bail on 27.12.2013. Thereafter, the detenu again indulged in a similar offence as was registered in Cr.No.210 of 2014-2015 on 03.06.2014 wherein he was produced before the concerned Magistrate and remanded for judicial custody and thereafter, the detenu was enlarged on bail on 04.06.2014.

The aforesaid material was examined by the detaining authority and it came to the conclusion that the detenu was a habitual offender and required to be prevented from indulging in such activity in public interest.

13. The order of detention, therefore, is clearly based upon the material produced before the detaining authority and on further scrutiny, it is evident that all other safeguards under AP Act 1 of 1986 have been followed and that the said detention order is justified. Hence, I do not find any justification to quash the detention order.

The writ petition is, accordingly, dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March , 2015

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[\[1\]](#) (2012) 2 SCC 386

[\[2\]](#) (2011) 5 SCC 244

[\[3\]](#) 2014 (1) ALD (CrI.) 1005 (AP)

[\[4\]](#) 2005(2) ALT 244 (F.B.)

[\[5\]](#) (2012) 2 SCC 389