

HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.8026 of 2015

ORDER : (Per Justice R.Subhash Reddy)

This Writ of Habeas Corpus is filed under Article 226 of the Constitution of India, seeking to direct the respondents to produce Sri Perumal Venkateshan S/o.Perumal, presently detained in Central Prison, Rajahmundry, East Godavari District, before this Court and to set him at liberty forthwith by ordering his release by declaring the order of detention dated 20.12.2014, passed by the 2nd respondent-District Collector, Chittoor, in Roc.No.C2/6839/2014, as confirmed in G.O.Rt.No.542, General Administration (Law and Order) Department, dated 23.02.2015, issued by the 1st respondent-State, as illegal and arbitrary.

2. In exercise of powers under Section 3(1) and (2) read with Section 2(g) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986), (hereinafter referred to as 'the Act'), the 2nd respondent-Collector and District Magistrate, Chittoor has issued the impugned order for detention of one Sri Perumal Venkateshan, who is the son of petitioner herein, on the ground that his activities are prejudicial to

the maintenance of public order apart from disturbing the public peace, tranquility and social harmony. In the grounds of detention served on the detenu, instances of four crimes that took place in the year 2014 are mentioned as under:

1. Crime No.84/2014 of Tirumala II-Town P.S., registered on 21.09.2014 for the offences under Section 379 of IPC, Sec.20(1)(c), (x) of A.P.Forest Act, 1967, Rule 3 of A.P.Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Rule 3 of A.P.Red Sander Wood Possession Rule 1989 and Sec.51 of Wild Life Protection Act, 1967.
2. Crime No.271/2014 of Alipiri P.S., registered on 23.09.2014 for the offences under Section 379 of IPC, Sec.20(i), (E), (ii), (iii), (iv), (viii), (x), Sec.29(4)(a)(i), 68(e) of the A.P.Forest Act, 1967 r/w.Rule 3, 4 of A.P.Forest Sandal Wood and Red Sander Wood Transit Act, 1969.
3. Crime No.164/2014 of Renigunta (U) P.S., registered on 23.09.2014 for the offences under Sections 307, 353, 379 of IPC, Sec.20(i) (C)(ii)(iii)(iv)(v) of A.P.Forest Act, 1967, Rule 3 of A.P.Red Sanders Transit Rules 1969, Sec.29(2)(B) of A.P.Forest Act, 1967 and Rule 3 of A.P.Forest Sandal Wood and Red Sander Wood Transit Act.
4. Crime No.149/2014 of Srikalahasti Rural P.S., registered on 25.09.2014 for the offences under Sections 307, 353, 379 of IPC, Sec.20(i), (C), (ii), III, IV, VI, X, Sec.29(2)(b) of A.P.Forest Act, 1967, Rule 3 of A.P.Forest Sandal Wood and Red Sander Wood Transit Act, 1969 punishable under Sec.20(i)(d)(1) and 29(4)(a)(i) of A.P.Forest Act, 1967.

3. Referring to the aforesaid crimes, in the grounds of detention, it is stated that the detenu, namely, Perumal Venkateshan is a habitual offender affecting public order, falling in the definition of "Goonda" under Section 2(g) of the Act and his continuous presence as a member of civil society is not desirable. It is stated that he is an intelligent and cunning man and many times he used to manage the things over phone only and change the mobile numbers frequently to avoid surveillance over his phone by the Police and that number of times, he escaped from Police by acting wisely and if he is released on bail, again he will go underground and continue his illegal activities. By recording satisfaction to the effect that the activities of Perumal Venkateshan are injurious to maintenance of public peace and law and order, order of detention is passed to detain him in Central Prison, Rajahmundry, East Godavari District for a period of 12 months from the date of his detention i.e. from 23.12.2014.

4. The impugned order of detention passed by the 2nd respondent, as confirmed by the 1st respondent, is mainly questioned on the ground that the detaining authority has arrived at subjective satisfaction basing on four crimes registered against the detenu on the ground that his activities are prejudicial to the maintenance of public peace and law and order. It is the case of petitioner that

Section 3 of the Act empowers the detaining authority to pass an order of detention only in cases where such authority arrives at subjective satisfaction that the activities of detenu are prejudicial to the maintenance of public order only and that law and order cannot be the subject matter of said Act. Thus, it is the case of petitioner that the detaining authority has travelled beyond the scope of the Act and passed order of detention referring to the material that is not relevant for detention under the Act. It is also the case of petitioner that the detenu being the resident of Tamilnadu State, is well-versed in Tamil language, but inspite of the same, the material based upon which the order of detention is passed, is supplied to him in English and Telugu languages, but not in the language known to him i.e. Tamil, and thus, the detenu is deprived of his right to make effective representation under Article 22(5) of the Constitution of India.

5. A detailed counter affidavit is filed by the 2nd respondent-Collector and District Magistrate, Chittoor. While denying the various allegations made by the petitioner, it is stated in the counter affidavit that the order of detention is passed as the detenu has been indulging in the offences of illegal cutting, storing and transportation of red sanders causing willful destruction of red sanders, thereby causing damage to the public property besides a tremendous loss of National wealth, depletion of green

cover resulting in adverse ecological balance, having ramification on the health and wellbeing of the public in and around Seshachalam forest area. It is stated that upon perusing the records placed before him by the sponsoring authority i.e. the Superintendent of Police, Tirupathi Urban Police District, having satisfied that the activities of detenu fall within the definition of "Goonda" as defined under Section 2(g) of the Act, order of detention is passed. The details of the crimes referred by the sponsoring authority are elaborately mentioned in the counter affidavit. It is further stated in the counter that on the date of passing of order of detention, the detenu was in judicial custody in Sub-jail, Tirupati, in connection with Crime No.271/2014 of Alipiri P.S. It is stated that originally, the detenu was arrested by the Police, Srikalahasthi Rural Police Station in connection with Crime No.149/2014 on 25.09.2014 and was lodged at Sub-jail, Srikalahasthi and subsequent to passing of the order of detention, the detenu was taken into custody and lodged at Central Prison, Rajahmundry from 23.12.2014. It is further stated that the order of detention, grounds of detention and the material relied upon, were served on the detenu in Telugu, English and Tamil languages and the same was acknowledged by him. Further, it is stated that the order of detention passed against the detenu was placed before the Advisory Board and the Advisory Board, in its meeting held on 30.01.2015, heard the detenu and

sent the opinion to Government and based on the recommendations of the Advisory Board, the Government has issued G.O.Rt.No.542, General Administration (L & O) Department, dated 23.02.2015, duly confirming the order of detention for a period of 12 months from the date of detention. It is further stated that as the order of detention is passed by arriving at subjective satisfaction by the detaining authority, there are no grounds to review the same. Further, with reference to the allegation of non-supply of translated copies of material in Tamil, in the counter affidavit, it is stated that as the grounds of detention and order of detention were supplied to the detenu in Tamil language, his right to make effective representation under Article 22(5) of the Constitution is not vitiated.

6. Heard Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of Smt.B.Mohana Reddy, counsel on record for petitioner, and the Special Government Pleader on behalf of the Advocate-General for the State of Andhra Pradesh.

7. It is contended by Sri C.V.Mohan Reddy, learned Senior Counsel appearing for petitioner that under the provisions of the Act, the 2nd respondent is empowered to pass an order of detention under Sections 3(1) and (2), only in cases where, ones activities are prejudicial to the maintenance of public order only, but in this case, the

subjective satisfaction is arrived at while passing the order of detention by clubbing public order and law and order. It is submitted that so far as law and order is concerned, it is a matter to be dealt with by punitive measures, but it cannot be the ground for passing the order of detention. It is also contended by the learned counsel that the detenu is undisputedly a resident of Tamilnadu State and his known language is only Tamil, but inspite of the same, he was not supplied with material which is made basis for passing an order of detention, in Tamil language. It is submitted that while order of detention is served in English, Tamil and Telugu languages, the material supplied is only in English and Telugu languages and no material is supplied by translating into Tamil language, and thus, the detenu is deprived of his right to make an effective representation and the same is in violation of Article 22(5) of the Constitution of India. The learned counsel, in support of his argument, has placed reliance on the judgments of Hon'ble Supreme Court in the case of **Ram Manohar Lohia v. The State of Bihar & another**^[1], in **Hadibandhu Das v. District Magistrate, Cuttack & another**^[2], in **A.C.Razia v. Govt. of Kerala & others**^[3], in **Powanammal v. State of Tamilnadu & another**^[4] and in the case of **Kamleshkumar Ishwardas Patel v. Union of India & others**^[5] and on an order of a learned Single

Judge of this Court in W.P.No.28803 of 2014, dated 21.10.2014.

8. On the other hand, it is contended by the learned Special Government Pleader appearing for respondents that the detenu is a habitual offender indulging in the offences of illicit cutting and transportation of red sanders causing damage to the public property. It is submitted that from the number of crimes referred to in the order of detention, it is clear that in order to prevent his activities which are prejudicial to the maintenance of public order, the 2nd respondent has exercised his power under Sections 3(1) and (2) of the Act and passed the order of detention based on the material sponsored by the sponsoring authority i.e. Superintendent of Police, Tirupathi Urban. It is stated that the grounds of detention are to be read as a whole and from a wholistic approach of the reading of the order, it is clear that as the detaining authority has arrived at subjective satisfaction to the effect that the activities of the detenu are prejudicial to the maintenance of public order, the order of detention is passed. It is submitted that merely because at one place it is mentioned that activities of detenu are prejudicial to the maintenance of not only public order but also law and order, that will not make the order as illegal. Further, it is contended by the learned Government Pleader that as the order of detention and the grounds of detention are

served on the detenu in English, Telugu and Tamil, merely because the translated copies of material are not supplied in Tamil language, the right of detenu to make a representation does not get affected. It is further contended that while receiving the material, detenu has signed in English, as such, no prejudice is caused to him so as to accept his plea to declare the detention order as illegal, only on the ground that the translated material which is referred to in the order of detention, is not supplied in the language known to him i.e. Tamil. Though a bunch of judgments are supplied, the learned Government has mainly relied on the judgments of Hon'ble Supreme Court in **Commissioner of Police & others v. C.Anita**^[6] and in **Smt.Godavari Shamrao Parulekar & others v. The State of Maharashtra & others**^[7].

9. The A.P.Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 is a State Legislation, which is enacted to have a special law in the State to provide preventive detention of the persons falling in six classes, namely, bootleggers, dacoits, drug offenders, goondas, immoral traffic offenders and land grabbers. In the objects and reasons itself, it is clearly stated that with the activities as referred above, the public order is adversely affected and so as to prevent the same

and to provide the mechanism for preventive detention, such an Act is enacted. Section 3(1) and (2) of the said Act empowers the Government to pass an order of detention with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender, land grabber, to prevent him from acting in any manner prejudicial to the maintenance of public order. In the present writ petition, it is the specific case of the petitioner that though the detaining authority is empowered to pass an order of preventive detention only for maintenance of public order, in the instant case, the detaining authority, not only on the ground of public order, but by clubbing it with law and order, has passed the order of detention. In view of the specific contention of learned counsel for petitioner, we have perused the order of detention, which is subject matter of challenge. In the instant case, the order of detention dated 20.12.2014 in Rc.No.C2/6839/2014, is passed by the 2nd respondent-Collector and District Magistrate, Chittoor in exercise of powers under Section 3(1) and (2) of the Act and in the operative portion of the order of detention, it is categorically stated that the grounds of detention in Telugu, English and Tamil and the material in support thereof, are sent to the detenu. In the grounds of detention, the detaining authority has referred to the history of various crimes registered against the detenu and in conclusion portion, by referring to the proposal sent by the Superintendent of Police, Tirupathi

Urban, has recorded his subjective satisfaction stating that the activities of the detenu are injurious to the maintenance of public peace and law and order.

10. Meaning and interpretation of “maintenance of public order” and “law and order” have fallen for scrutiny before the Hon’ble Supreme Court in **Ram Manohar Lohia**’s case (1 supra). In the aforesaid judgment, the Hon’ble Supreme Court has held that the public order and law and order are not the same. In the said judgment, as per the majority view, it is held that where a man can be deprived of his liberty under a Rule by the simple process of making of a certain order, he can only be so deprived if the order is in terms of the rule and strict compliance with the letter of the rule is the essence of the matter. In the aforesaid judgment, while interpreting the identical provisions of public order, law and order and security of the State, the Hon’ble Supreme Court has held that ‘law and order’ comprehends disorders of more gravity than those affecting ‘public order’. It is held that law and order should be the largest circle within which is the next circle representing public order and the smallest circle represents security of State. Thus, from the interpretation as referred above, it is clear that ‘law and order’ comprehends disorders of more gravity than that of ‘public order’. In the same judgment, it is also held that the Courts cannot inquire into grounds of satisfaction, and

similarly, State also cannot prove the legality of order, except on the terms as contained in such order. We are of the considered view that the aforesaid ratio laid down by the Hon'ble Supreme Court supports the contention of the learned counsel for petitioner that if the order of detention is passed by the detaining authority on the ground that the activities of detenu are prejudicial to the interest of not only public order, but also law and order, it would amount to widening the scope of the very provision.

11. It is the contention of the learned Government Pleader that from the material placed on record, it is clear that the activities of detenu are not only unlawful but are also prejudicial to the public interest and that the material furnished with the grounds of detention indicate that the allegations made against the petitioner in various crimes are of serious nature and it is not possible to prevent the activities of such person by referring to ordinary procedure contemplated under law, and hence, it necessitated to passing of order of detention to prevent his illegal activities. But at this stage, we feel it relevant to refer to another judgment relied on by the learned counsel for petitioner in **Kamleshkumar Ishwardas Patel's** case (5 supra). While considering the merits of detention order under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the Prevention of Illicit Traffic in Narcotic Drugs

and Psychotropic Substances Act, 1988, the Hon'ble Supreme Court has held as under :

“49. At this stage, it becomes necessary to deal with the submission of the learned Additional Solicitor General that some of the detenus have been indulging in illicit smuggling of narcotic drugs and psychotropic substances on a large scale and are involved in other anti-national activities which are very harmful to the national economy. He has urged that having regard to the nature of the activities of the detenus the cases do not justify interference with the orders of detention made against them. We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be “zealously watched and enforced by the Court”. Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. We would, in this context, reiterate what was said earlier by this Court while rejecting a similar submission:

“May be that the detenu is a smuggler whose tribe (and how their numbers increase !) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus.””

In view of the aforesaid judgment, it is very difficult to accept the submission made by the learned Government Pleader, so as to maintain the impugned order only on the ground that the allegations made against the petitioner are grave and have dangerous effect on the society at large. While considering such matters, when the right to personal liberty is pleaded alleging that respondents have passed the order of detention by widening the scope of the power conferred under Section 3(1) and (2) of the Act by passing an order of detention on the ground that the activities of detenu are not only prejudicial to the interest of public order but also to law and order, we cannot accept the contention that the order of detention is passed as the activities of detenu are serious in nature and have dangerous effect on the public at large, as the same will not outweigh the right to personal liberty guaranteed by the Constitution. It is also relevant to note that in identical

circumstances, when an order of detention is questioned, a learned Single Judge of this Court in W.P.No.28803 of 2014, has allowed the writ petition by following the judgment of Hon'ble Supreme Court in the case of **Ram Manohar Lohia's** case (1 supra). Therefore, we are of the view that the order of detention passed by the 2nd respondent on the ground that the activities of detenu are prejudicial to the interest of law and order, is outside the scope of the power conferred under Section 3 (1) and (2) of the Act.

12. In the judgment relied on by the learned Government Pleader in **Godavari Shamrao Parulekar's** case (7 supra), it is true that the Hon'ble Supreme Court has held that when an order is passed using different expressions at different places, satisfaction arrived at by reading the order as a whole, is to be given effect to, but in view of the subsequent judgment of the Hon'ble Supreme Court in **Ram Manohar Lohia's** case (1 supra), this contention cannot be accepted. It is also clear from the concluding portion of the order in the present case that the subjective satisfaction of the detaining authority is arrived at only on the premise that the activities of the detenu are not only prejudicial to the interest of public order but are also prejudicial to the interest of law and order. The other portions of the order where sponsoring authority's proposals are referred to, such expression of 'public order'

but it will not outweigh the concluding portion arrived at by the detaining authority, by which, he arrived at subjective satisfaction to pass an order of detention on the ground that the activities of detenu are also prejudicial to law and order. In that view of the matter and further, in view of the judgment of Hon'ble Supreme Court in **Ram Manohar Lohia's** case (1 supra), we are not able to accept the contention advanced by the learned Government Pleader.

13. There is yet another contention advanced by the learned Senior Counsel Sri C.V.Mohan Reddy that the petitioner is a resident of Tamilnadu and his known language is only Tamil, but not Telugu and English. It is contended that though the grounds of detention are supplied to the detenu in Telugu, Tamil and English languages, the material relied on for passing the order of detention is supplied only in Telugu and English languages, and thus, the detenu is deprived of making an effective representation before the Advisory Board. While admitting that though the grounds of detention are supplied in the languages of Telugu, English and Tamil, the material is supplied only in English and Telugu languages, the learned Government Pleader submits that as the petitioner knows English language as he subscribed his signature in English in token of receiving the grounds of detention etc., it cannot be said that he is deprived of the right to make a representation merely because he was not supplied the material referred to, in

Tamil.

14. Though it is stated in the order of detention that the grounds of detention and material are ordered to be supplied in Telugu, English and Tamil languages, it is clear that no material is supplied to the detenu by translating into Tamil. All the crimes registered are in the State of Andhra Pradesh and while referring to such crimes under various Sections, reasons are recorded so as to invoke the provisions of the Act, but such material is not supplied in Tamil language. It is true that from the material placed on record, it is clear that the detenu has signed in English language in token of receiving grounds etc., but merely because he has signed in English, we cannot say that he is well-versed with English language. It is common practice that many those who sign in English are not conversant with the said language. Thus, we are not convinced to accept the plea of the learned Government Pleader that non-supply of material in Tamil language, did not affect the right of detenu to make an effective representation. In **Hadibandhu Das'** case (2 supra), the Hon'ble Supreme Court has held that non-supply of translation and script in the language which is known to the detenu amounts to denial of right of making effective representation guaranteed under Article 22(5) of the Constitution. Further, in **A.C.Razia's** case (3 supra), the Hon'ble Supreme Court has held that the grounds of

detention together with supporting documents should be made available to the detenu in a language known to him. Paragraph 10 of the said judgment reads as under :

“10. We are concerned here with clause (5) of Article 22. The dual rights under clause (5) are : (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority, and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this article so as to effectuate the guarantees/safeguards envisaged by the Constitution under clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very

ground.”

To the same effect is the judgment in **Powanammal's** case (4 supra), in which, the Hon'ble Supreme Court has held that the documents which are made basis for passing an order of detention must be furnished in the language understood by the detenu and non-supply of such material would be fatal. In the aforesaid judgment, by further making a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and on document which finds a mere reference in the grounds of detention, the Hon'ble Supreme Court has held that non-supply of copy of document relied upon in the grounds of detention is held to be fatal and it is further held that the detenu need not show that any prejudice is caused to him.

15. The aforesaid judgments will fully support the case of petitioner. In this case, we are of the view that though the instances of several crimes registered against the detenu are made basis for passing an order of detention, the non-supply of material which is relied on for passing such order, is fatal and we are of the view that by not supplying such material, the detenu is deprived of his right to make an effective representation, guaranteed under Article 22(5) of the Constitution.

16. Though several other judgments are also cited by

the learned Government Pleader in support of his plea that when subjective satisfaction is arrived at on the material available on record, it is not open for the Courts to substitute such opinion, such line of judgments are not helpful to the case of respondents for the reason that the order under challenge in the present case is on totally different grounds.

17. For the aforesaid reasons, as we are of the view that the order of detention is passed traversing beyond the powers conferred under Section 3(1) and (2) of the Act, on the premise that the activities of detenu are prejudicial to the maintenance of law and order, and further, as the petitioner is deprived of his right to make an effective representation by not supplying the translated copies of material relied on for passing the order of detention in Tamil, which is the language known to the detenu, the said order is fit to be declared as illegal.

18. Accordingly, we allow this writ petition by quashing the order of detention dated 20.12.2014, and direct the respondents to release the detenu forthwith. It is made clear that such order for release shall be given effect to if the custody of the detenu is not otherwise required in connection with any other case registered against him.
No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

22nd September 2015

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[\[1\]](#) AIR 1966 SC 740
[\[2\]](#) AIR 1969 SC 43
[\[3\]](#) (2004) 2 SCC 621
[\[4\]](#) (1999) 2 SCC 413
[\[5\]](#) (1995) 4 SCC 51
[\[6\]](#) (2004) 7 SCC 467
[\[7\]](#) AIR 1964 SC 1128