

**\* THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA  
RAO**

**AND  
THE HON'BLE SMT. JUSTICE ANIS**

**+ WRIT PETITION No.33858 OF 2015**

**% Date 30-12-2015**

**# Smt. V. Uma Maheswari**

**... Petitioner**

**V.**

**\$ The State of Telangana,  
and another**

**...Respondents**

**! Counsel for the petitioner : Sri Challa  
Dhanamjaya**

**^ Counsel for Respondents : Additional  
Advocate General  
Government Pleader  
for Home**

**< GIST :**

**> HEAD NOTE:**

**? CASES REFERRED:**

1. (2002) 8 SCC 342
2. (2011) 5 SCC 244
3. AIR 1987 SC 762

**C/15**

**IN THE HIGH COURT OF JUDICATURE AT  
HYDERABAD  
FOR THE STATE OF TELANGANA AND  
THE STATE OF ANDHRA PRADESH**

\* \* \* \*

**WRIT PETITION No.33858 OF 2015**

Between:

Smt. V. Uma Maheswari

.. Petitioner

and

The State of Telangana  
and another

.. Respondents

**JUDGMENT PRONOUNCED ON :** December 30, 2015

—  
**HON'BLE SRI JUSTICE** : NOOTY RAMAMOHAN  
RAO

**AND**

**HON'BLE SMT. JUSTICE** : ANIS

1. Whether Reporters of Local :  
Newspapers may be allowed  
to see the Judgments?

2. Whether the copies of :

judgment may be marked to  
Law Reporters/Journals?

3. Whether their Ladyship/Lordship :  
wish to see the fair copy of the  
Judgment?

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA  
RAO  
AND  
THE HON'BLE SMT. JUSTICE ANIS**

**WRIT PETITION No.33858 OF 2015**

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**ORDER:** (Per NRR,J)

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This Writ Petition is instituted seeking a Writ of Habeas Corpus for release of the detenu, who has been detained by the Collector – cum – District Magistrate, Hyderabad, through his proceedings, dated 09.09.2015.

2. The Collector passed orders on 09.09.2015, exercising the power available to him under sub-section (2) of Section 3 of Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (henceforth referred to for brevity as 'the Act'), for detention of Sri Vasupula Yellam, S/o. V. Yellaiah, aged about 56 years, R/o. H.No.18-1-337/A/26, Rajiv Gandhi Nagar, Uppuguda, Hyderabad, on the ground that he is a Bootlegger.

3. The Act has been ushered in providing for

preventive detention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers so as to prevent them from indulging in dangerous activities prejudicial to the maintenance of public order. Various expressions used in the statute are defined in Section 2 of the Act. Clause (b) thereof defined the expression 'Boot-legger' in the following terms:

““boot-legger”” means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing;”

4. Section 3 of the Act conferred power for ordering detention of certain persons. Sub-section (1) thereof conferred power on the State Government to detain persons who are Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers with a view to prevent them from acting in any manner prejudicial to the maintenance of public order. However, sub-section (2) thereof has conferred similar power on a District Magistrate or a Commissioner of Police to order for preventive detention of the aforementioned class of

persons. Sub-section (3) specified that when an order is made by the authority, on whom power is conferred by sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter. Importantly, it is spelt out therein that the order passed by the authority under sub-section (2) shall remain in force for more than 12 days after the making thereof, unless, in the meantime, it has been approved by the Government.

5. Sri Challa Dhanamjaya, learned counsel for the writ petitioner, would point out that the counter affidavit has not spelt out, as a matter of fact as to whether the State Government has approved the order of detention passed by the District Magistrate on 09.09.2015 within the aforementioned time limit of 12 days spelt out under sub-section (3) of Section 3 of the Act. However, it is only appropriate for us to know that the State Government, in terms and in accordance with the provision contained under Section 10 of the Act, shall refer within three weeks from the date of detention, the grounds on which the person was detained and the order of detention together with representation, if any, made by the detenu for consideration of the Advisory Board constituted by it under Section 9 of the Act. The counter affidavit has brought out that the Advisory Board reviewed the case of the detenu

on 19.10.2015 and after hearing the detenu as well as his wife, the present petitioner, and his son and also the Investigating Officers into various crimes registered against the detenu, has tendered its opinion that there is sufficient cause for detention of the detenu. Thereafter, the State Government taking into account and considering the opinion tendered by the Advisory Board, passed final orders through their G.O.Rt.No.3014, General Administration (Law and Order) Department, dated 12.11.2015, specifying the duration of detention as 12 months. Section 13 of the Act has prescribed the maximum period for which any person may be detained as 12 months from the date of detention.

6. Along with the order of detention, the grounds of detention have also been furnished to the detenu on 09.09.2015. The grounds of detention have listed out five separate grounds. Ground No.1 relates to an incident which took place on 10.02.2015. Upon certain credible information being gathered by the Prohibition and Excise Sub-Inspector, Charminar, Hyderabad, that illicitly distilled liquor is sold at an open place situated opposite to premises bearing H.No.18-1-337/A/26, Rajiv Gandhi Nagar, Uppuguda, Hyderabad, the raid party raided the said place and detected possession of illicitly distilled liquor stored in 570 sachets, each comprising of 100 ml. It is set out that upon noticing the arrival of the raid party, the detenu ran away. The raid party has seized the illicitly

distilled liquor stored in sachets and prepared two separate samples containing three sachets each and sent them for chemical examination. It is asserted that the Government Chemical Examiner has opined in his report, dated 25.02.2015, that the samples are illicitly distilled liquor unfit for human consumption and injurious to health. It was recorded in the grounds of detention that the detenu was arrested on 23.02.2015 and was produced before the competent criminal Court, which sent him to judicial remand. The accused was charge sheeted in this case.

7. Ground No.2 relates to an incident that took place on 25.04.2015 at about 07:10 PM concerning a similar raid at the same premises as mentioned supra in Ground No.1. This time, around 800 sachets of 100 ml each of illicitly distilled liquor together with a Honda Activa vehicle were seized. It is once again alleged that the detenu ran away upon noticing the raid party. It is further set out that the Government Chemical Examiner in his report, dated 06.05.2015, has opined that the sachets seized contain illicitly distilled liquor unfit for human consumption and injurious to health. It is asserted that the detenu was arrested on 26.06.2015 and when produced before the competent criminal Court, he was sent for judicial remand. The accused was charge sheeted even in this case.

8. Ground No.3 relates to an incident which took place on 26.06.2015 at about 06:00 PM, where a similar

raid was organized at the premises bearing H.No.18-1-337/A/25, Rajiv Gandhi Nagar, Uppuguda, Hyderabad, where two plastic bags containing 472 sachets containing 100 ml each of illicitly distilled liquor were seized and it is on that day, the detenu was arrested. Even in this regard, the report, dated 03.07.2015, submitted by the Government Chemical Examiner discloses that the samples are illicitly distilled liquor unfit for human consumption and injurious to health. The accused was charge sheeted even in this case.

9. Ground No.4 relates to the incident which took place on 15.07.2015 at about 08:55 AM, where a similar raid was organized at an open place besides a Nala at Rajiv Gandhi Nagar, Uppuguda, Hyderabad, where two plastic bags containing 483 illicitly distilled liquor sachets each of about 100 ml were seized. It is asserted that upon noticing the excise raid party, the detenu ran away from that place. He was arrested on 31.07.2015 and was ordered to judicial remand by the criminal Court. The Government Chemical Examiner, in his report, dated 21.07.2015, has opined that the samples are illicitly distilled liquor unfit for human consumption and injurious to health. Even in this case, charge sheet was filed against the accused.

10. The last ground of detention speaks of an incident which took place on 06.09.2015 at about 04:30

PM, when the excise party raided the premises bearing H.No.18-1-337/A/25, Rajiv Gandhi Nagar, Uppuguda, Hyderabad, where four bags containing 1150 sachets of illicitly distilled liquor each of 100 ml were seized and the detenu was arrested. The Government Chemical Examiner in his report, dated 07.09.2015, opined that the samples are illicitly distilled liquor unfit for human consumption and injurious to health. Even in this case, charge sheet was filed.

11. From a careful analysis of the aforementioned grounds for detention, it emerges that the detenu has been booked in one case or the other on five different occasions between 10.02.2015 and 06.09.2015 i.e., in a period of approximately seven months. Because of this frequency of his involvement in excise offence and his alleged activity of indulging in sale of illicitly distilled liquor in 'easy to carry and consume' sachets of 100 ml, the detaining authority has arrived at the subjective satisfaction that the activities indulged in at regular intervals by the detenu are prejudicial to the maintenance of public order and hence, he passed the order of preventive detention on 09.09.2015.

12. Calling in question the correctness of the order of detention, Sri Challa Dhanamjaya, learned counsel for the petitioner, has raised fundamentally two contentions. The first is that the detaining authority has not applied his mind

as to whether it is really required to pass an order to preventively detain the detenu at all, inasmuch as the detenu was arrested on 06.09.2015 in connection with crime No.308/15-16 on the file of the Excise Station, Charminar, and he has in fact been remanded to judicial custody by the Chief Metropolitan Court, Nampally, Hyderabad. Thus, from 06.09.2015 onwards, the detenu was already under the custody of the State and hence, the question or necessity to further preventively detain him in indulging in an activity presumed to be dangerous to public good would not arise.

13. The second contention raised by Sri Challa Dhanamjaya is that all the grounds of detention narrate about the incident concerned. It is also noticed by the detaining authority that the detenu was arrested in connection with each of those crimes and he was remanded to judicial custody by the criminal Court concerned, but nowhere, the detaining authority has been informed by the sponsoring agency that the detenu was granted bail in the first four cases and subject to the terms and conditions stipulated in the bail order, the detenu was set at liberty. Even without noticing this fact, the District Magistrate has mechanically passed the order to preventively detain the detenu. The mechanical attitude adopted by the detaining authority, contends Sri Challa Dhanamjaya, is reflected in the very fact that

when the detenu was already under the custody of State from 06.09.2015 onwards, the order of preventive detention came to be passed on 09.09.2015. Learned counsel in support of his pleas has placed strong reliance upon the judgments rendered by the Honourable Supreme Court in **Union of India v. Paul Manickam and another**<sup>[1]</sup> and **Rekha v. State of Tamil Nadu and another**<sup>[2]</sup>.

14. While examining one of the questions relating to whether when the detenu was in custody, the anticipated and apprehended acts were practicably possible at all or not, the Supreme Court in paragraph No.14 of its judgment rendered in **Paul Manickam's** case (supra 1) has spelt out the principle in the following manner:

“14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in Jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not

needed when detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied on cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See *N. Meera Rani v. Govt. of T.N.* and *Dharmendra Suganchand Chelawat v. Union of India*.) The point was gone into detail in *Kamarunnissa v. Union of India* (AIR 1991 SC 1640). The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.”

(Emphasis is brought out)

15. A careful analysis of the principle enunciated by the Honourable Supreme Court brings out that the detaining authority was required to apply its mind and clearly bring out the awareness of the possibility of release of such a person on bail and thereafter, a real likelihood of

apprehension of such an individual indulging in acts which can be considered as prejudicial to public order would arise. The detaining authority must necessarily reflect in its order not only the subsisting custody of the detenu, but must take the same into account while making the order. Only based upon the material available with the detaining authority, if he is reasonably satisfied that there is likelihood of his release and in view of his antecedent prejudicial activities, recurrence of the same to be prevented from happening, the order of detention can be passed.

16. Sri Challa Dhanamjaya, learned counsel for the petitioner, would therefore urge that the detention order has merely reflected the fact that the detenu was arrested pursuant to the raid that was carried out at his premises on 06.09.2015 at about 04:30 PM and that the Chief Metropolitan Magistrate sent him to judicial remand by the time the prevention order came to be passed on 09.09.2015. It is asserted that no application seeking grant of bail is even moved in connection with the said crime No.308/15-16 on the file of Excise Station, Charminar. Therefore, there is no likelihood whatsoever of the prospects of release of the detenu from the custody in connection with crime No.308/15-16 on 09.09.2015, the day on which the preventive detention order was passed. Hence, the learned counsel urged that as per the law laid down in **Paul Manickam's** case (supra 1) by the

Honourable Supreme Court, the detenu deserves to be set at liberty immediately.

17. Sri H. Venu Gopal, the learned Government Pleader, would attempt to neutralize this contention by pointing out that the detaining authority is conscious and aware that the detenu was arrested pursuant to the raid that took place on 06.09.2015 at 04:30 PM, as the said fact is reflected in the grounds of detention itself. It is therefore a case where the detaining authority is conscious about the factum of detenu being in the custody of the State ever since his arrest pursuant to the raid that took place on 06.09.2015 at 04:30 PM at his premises. But, however, the real likelihood of the detenu being enlarged on bail is what is inferred by the detaining authority. Ground Nos.1 to 4 would disclose the repeated arrest and subjecting the detenu to custody initially by the criminal court concerned, but however, later on the detenu is released on bail in connection with the first four crimes which would reflect that the detenu is being routinely enlarged on bail by the criminal Court and as soon as he comes out of the judicial custody, the detenu was taking to his old habit and is carrying on the bootlegging activity. Therefore, Sri H. Venu Gopal would contend that the detaining authority must necessarily be ascribed the knowledge of detainee getting released on bail regularly and is therefore, taking to his old dangerous activities once

again.

18. While we are conscious that an order of preventive detention is not meant to penalize the detainee for his past acts of indulgence in dangerous or prejudicial activities of public order, it is essential not only to prevent the detainee from indulging in such activities henceforth, but at the same time, we are also conscious of the caution administered by the Honourable Supreme Court in

**Hem Lall Bhandari v. State of Sikkim**<sup>[3]</sup>, wherein it was observed thus:

“It is not permissible, in matters relating to the personal liberty and freedom of a citizen, to take either a liberal or a generous view of the lapses on the part of the officers.”

19. In fact, the Honourable Supreme Court itself has noticed this principle while deciding **Paul Manickam's** case (supra 1). Therefore, the principle which **Paul Manickam's** case (supra 1) has set out was that the detention order or the grounds of detention must positively reflect not merely the awareness of the fact of the custody of the detenu at the time of passing of the detention order, but it must show satisfaction of the detaining authority, which must be rested upon reasonable material that the detenu is likely to be released once again on bail. In our opinion, the impugned order of preventive detention and the grounds of detention are silent and clearly did not reflect this element of requisite satisfaction of the detaining

authority.

20. A three Judge Bench of the Honourable Supreme Court in **Rekha's** case (supra 2) after having traversed the legal principles on the subject has set out that there is real possibility of release of a person on bail who is held in custody would arise provided he has moved a bail application, which is pending. Thereafter, it is observed by the Honourable Supreme Court in paragraph No.27 of **Rekha's** case (Supra 2) as under:

“... It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.”

(Emphasis is brought out)

21. In paragraph 29, the Honourable Supreme Court declared that if the ordinary law of the land i.e., penal code or other penal statutes can deal with a situation, recourse to preventive detention law will be illegal.

22. In view of our finding that in the instant case the detaining authority did not have any material before him as

on 09.09.2015 when he passed the order of detention, that there is any real likelihood that the detenu would be enlarged on bail, we cannot sustain further detention of the detenu as either valid or justified. In that view of the matter, we order for the detenu to be released and set free immediately, if he is not required in connection with any other crime.

23. Accordingly, the Writ Petition is allowed. Miscellaneous Petitions, if any pending in this Writ Petition, shall stand closed. No costs.

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**NOOTY RAMAMOHANA RAO, J**

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**ANIS, J**

30<sup>th</sup> December, 2015

Note: L.R. Copy to be marked.  
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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA  
RAO  
AND  
THE HON'BLE SMT JUSTICE ANIS**

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**WRIT PETITION NO.33858 OF 2015**

**A**

Dt:30.12.2015

MD

[\[1\]](#) (2002) 8 SCC 342

[2] (2011) 5 SCC 244

[\[3\]](#) AIR 1987 SC 762