

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.31985 of 2014

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BETWEEN

Smt. B. Uma.

... PETITIONER

AND

The Government of Andhra Pradesh, Rep. by its Chief Secretary, General Administration (Law & Order) Department, Secretariat, Hyderabad and two others.

...RESPONDENTS

Counsel for the Petitioner: MR. MASTHAN NAIDU CHERUKURI

Counsel for the Respondents: ADVOCATE GENERAL (AP)

The Court made the following:

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ORDER:

The wife of the detenu seeks a Mandamus against the order of detention dated 28.06.2015 passed by the second respondent, as confirmed by the first respondent under G.O.Rt.No.2904 General Administration (Law & Order) Department dated 21.08.2014.

2. Petitioner states that the aforesaid order of detention is based upon 10 crimes registered against the detenu but the detaining authority was not apprised of the fact that the detenu was already tried and acquitted in at least 4 of the cases listed in the order of detention. It is also pointed out that the detenu was already enlarged on bail in crimes listed under items 2, 8, 9 and 10 in the detention order but the fact of enlargement of the detenu on bail was not brought to the notice of the detaining authority and thereby, the subjective satisfaction of the detaining authority is vitiated.

3. Learned counsel for the petitioner pointed out that the order of detention itself mentions that the crime shown under item 1 ended in acquittal and similarly, in the crimes shown under items 5, 6 and 7, the detenu was acquitted by the criminal Court. In view of that, therefore, learned counsel submits that taking those crimes into consideration for the purpose of passing of detention order clearly vitiates the detention order. Learned counsel would also submit that ordinary course of criminal prosecution having already launched against the detenu there was no warrant for invocation of the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 hereinafter referred to as the Act 1 of 1986 merely on the ground that three of the cases relate to extortion and four of the cases relate to various offences.

4. Counter affidavit filed by the then detaining authority states that out of the 10 crimes registered against the detenu, his activities were found prejudicial to the maintenance of public order, hence, the order of detention was necessitated. The crimes in which the detenu is stated to be enlarged

on bail were crimes registered under ordinary law but the detenu did not mend his ways and it is stated that granting of regular bail and not placing of such documents before the detaining authority does not vitiate the subjective satisfaction of the detaining authority. The allegation of the petitioner that though the detenu was acquitted in four cases, the same were shown in the detention order is, however, not contravened in the counter affidavit.

5. During the hearing of this writ petition, learned counsel for the petitioner placed reliance upon a decision of the Supreme Court in **PIYUSH KANTILAL MEHTA v. COMMISSIONER OF POLICE**^[1] where the Supreme Court interpreted the word 'public order' to mean that the activity of the detenu must be establish of such a nature that it creates insecurity among the general public and panic and fear in the minds of the members of the public. Learned counsel also relied upon another decision of the Supreme Court in **KISHORI MOHAN v. STATE OF WEST BENGAL**^[2] wherein distinction was made between activities, which affect law and order and activities, which affect public order. According to the learned counsel, even assuming that the allegations made against the detenu with reference to the crimes mentioned in the detention order are correct, they merely show disturbance to the law and order, which is not sufficient to conclude that the public order is affected. Learned counsel also placed reliance upon decision of the Supreme Court in **RUSHIKESH TANAJI BHOITE v. STATE OF MAHARASHTRA**^[3] wherein also the detention order was quashed on the ground that the detenu, being on bail and enjoying freedom, was not brought to the notice of the detaining authority.

6. An unreported judgment of this Court in WP.No.28654 of 2012 dated 17.10.2012 is also relied upon where the detenu therein was said to be involved in various offences. In that case also, the detenu was arrested and released on bail in five cases and in three of the cases, he was not even arrested. However, the order of detention recorded that the detenu was

released on bail in all the cases, which, obviously, shows that the detaining authority was not apprised of the bail petitions moved by the detenu nor the orders granting bail were within the knowledge of the detaining authority. Hence, the Division Bench allowed the writ petition by holding that bail applications and bail orders, which are vital documents, were not produced by the sponsoring authority before the detaining authority to enable the detaining authority to arrive at subject satisfaction as to whether or not to pass the order of detention. It was also held that even one ground of detention, which form the basis of the order of detention is found to be bad, the order of detention is liable to be set aside in entirety. Further, the judgment of the Supreme Court in **REKHA v. STATE OF TAMIL NADU**^[4] is also relied upon. However, the said case and the ratio thereof is already referred to and relied upon in **RUSHIKESH TANAJI BHOITE's** case (3 supra). Lastly, the learned counsel for the petitioner relied upon a decision rendered by me in WP.No.28803 of 2014 dated 21.10.2014 wherein the order of detention was quashed on the ground that the said order was merely passed on the ground of affecting law and order problem but not on the ground of prejudicial to the maintenance of public order.

6. Learned Advocate General, on the other hand, submits on the basis of the counter affidavit filed by the detaining authority that the crimes alleged against the detenu, as shown in the detention order, show that his activities are prejudicial to the maintenance of public order causing widespread danger to the lives of public. It is also noted that even after enlargement on bail, the detenu continued to commit crimes and that grant of regular bails to the detenu and non-placing of those orders before the detaining authority has not any way affected the subjective satisfaction of the detaining authority.

Learned Advocate General placed reliance upon a decision of a learned single Judge of this Court in WP.No.22820 of 2014 and batch dated 13.10.2014 wherein the learned Judge considered the same contention with regard to non-placing of bail orders before the detaining authority and was of

the view that in those cases, no such demonstration was being carried out to show that the bail order contained vital material and as to how the order of bail would have made a difference in the matter of subjective satisfaction of the detaining authority and the writ petitions were dismissed. Learned Advocate General, however, fairly stated that the said decision is pending in appeal and has not yet attained finality.

7. Learned Advocate General placed reliance upon a decision of the Supreme Court in **SUNILA JAIN v. UNION OF INDIA** ^[5] and contended that merely because bails obtained by the respective detenu in some of the cases were not placed before the detaining authority, would not vitiate the subjective satisfaction.

However, a reading of paras 8 to 13 of the said decision would show in that particular case the detaining authority was aware of the orders under which the detenu was released on bail and merely because the bail applications were not placed before the detaining authority, it was held not to vitiate the subjective satisfaction.

8. The point for consideration, therefore, is as to whether the order of detention is vitiated by (a) the orders granted to the detenu enlarging him on bail in four of the 10 criminal cases, relied upon in the detention order, were not brought to the notice of the detaining authority and (b) the acquittal of the detenu in four of the criminal cases out of 10 crimes listed in the detention order, having not been apprised to the detaining authority.

POINT (a):

9. I have considered identical submission in WP.No.32710 of 2014 and batch and based on the ratio of the decisions of the Supreme Court in **RUSHIKESH TANAJI BHOITE's** case (3 supra) and **REKHA's** case (4 supra), I have already held that the said material was vital to be filed before the detaining authority to enable the authority to come to the conclusion as to

whether the detention is warranted. The relevant portion of the findings in the aforesaid judgment is extracted hereunder:

“33. I have deeply considered the said contentions on either side. In my view, it was absolutely essential for the detaining authority to have been apprised of all the relevant facts and particularly, where a series of criminal cases against the detenu form the basis of the grounds of detention. It was, therefore, imperative for the detaining authority to be apprised of the fact that the respective detenu was released on bail in more than one crime listed in the grounds, as that would, *inter alia*, lead to an inference that a competent criminal Court has chosen to enlarge on bail rather than holding the detenu in custody ...”

POINT (b):

10. So far as this point is concerned, the acquittal of the detenu after trial in four of the criminal cases, which is itself noted in the order of detention, is also of vital significance. Once the detenu was acquitted in the said cases, it should no longer form the basis of the detention order. In which case, only 6 cases out of the 10 crimes remain as the basis for the detention order. Even out of the 6 cases, the detenu was enlarged on bail in four of the cases, hence, taking a cumulative view, it is difficult to accept the contention of the learned Advocate General that the subjective satisfaction of the detaining authority is not vitiated, as the detaining authority could not have concluded that the detention is necessary in the face of acquittal of the detenu in four cases and enlargement on bail in other four cases leaving merely two cases, as the basis for passing the detention order.

11. It is, no doubt, true that the ordinary criminal law is already invoked against the detenu by initiating appropriate prosecution.

In such circumstances, the detaining authority has not been able to justify the invocation of extraordinary power of detention under the AP Act 1 of 1986 on the facts and circumstances of the case.

Points (a) and (b) are accordingly answered in favour of the petitioner.

In view of the above, the writ petition is allowed as prayed for. The detenu is entitled to be released and is accordingly directed to be released forthwith unless his presence is required in any other criminal case and subject to appropriate proceedings in such criminal cases.

As a sequel, the miscellaneous applications, if any, shall stand closed.

There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 2, 2015
DSK

[\[1\]](#) 1989 SUPP (1) SCC 322

[\[2\]](#) AIR 1972 SC 1749

[\[3\]](#) (2012) 2 SCC 72

[\[4\]](#) (2011) 5 SCC 244

[\[5\]](#) (2006) 3 SCC 321