

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

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W.P.No.8819 of 2015

Between:

P. Surendra

.... Petitioner

Vs.

The State of Andhra Pradesh, rep., by its Chief Secretary, Secretariat Buildings,
Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.10.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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

2. Whether the copies of judgment may be marked

to Law Reports/Journals

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

JUSTICE RAMESH RANGANATHAN

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AND

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! Counsel for the petitioner: Sri D. Purnachandra Reddy

^ Counsel for respondents: Learned Advocate General for the State of Andhra Pradesh appearing on behalf of the respondents

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> HEAD NOTE:

? Citations:

1. (2012) 2 SCC 386
2. (2012) 2 SCC 176
3. (2012) 13 SCC 585
4. (1991) 1 SCC 128
5. (1984) 3 SCC 14
6. (1990) 1 SCC 746
7. 2015(1) ALT (CrI) 385 (SC)
8. (1985) 4 SCC 232
9. (2011) 4 SCC 244
10. (2012) 2 SCC 389
11. (2011) 4 SCC 260
12. (2004) 7 SCC 467
13. (1975) 3 SCC 198
14. (2008) 3 SCC 613
15. (1975) 2 SCC 81
16. AIR 1952 SC 196
17. 1917 AC 260
18. (1979) 4 SCC 370

19. (1999) 8 SCC 177
20. (2003) 8 SCC 342
21. (1990) 3 SCC 309
22. (1986) 4 SCC 378
23. AIR 1964 SC 334
24. (Judgment in W.P. No.10018 of 2012, dated 29.06.2012)(APHC)(DB)
25. (1989) 4 SCC 418
26. (1986) 4 SCC 416
27. (1989) 2 SCC 222
28. (1990) 2 SCC 1
29. 1994 Supp (1) SCC 597
30. (2006) 2 SCC 664
31. (2006) 9 SCC 711
32. (2002) 7 SCC 129
33. (2006) 7 SCC 603
34. (2006) 6 SCC 64
35. (1988) 1 SCC 436
36. (1990) 1 SCC 291
37. (1999) 8 SCC 473
38. (1982) 2 SCC 43
39. (1991) 4 SCC 39
40. (1996) 3 SCC 194
41. AIR 1953 SC 318 = 1953 SCR 708
42. (1991) 1 SCC 476
43. (1970) 1 SCC 219
44. (judgment in W.P. No.246 of 1969 dated 10.09.1969)
45. AIR 1981 SC 746
46. (1989) 3 SCC 173
47. (1989) 3 SCC 277
48. (2010) 9 SCC 618
49. (2008) 5 SCC 490
50. (2011) 10 SCC 781
51. (2013) 4 SCC 435
52. (1999) 1 SCC 417
53. (1969) 1 SCC 433
54. (1970) 3 SCC 696
55. (1974) 1 SCC 637
56. (1983) 4 SCC 537
57. (1987) 4 SCC 58
58. (1990) 3 SCC 148

59. (1990) 3 SCC 459
60. (1992) 4 SCC 495
61. 1992 Cri.L.J. 109 (SC)
62. (2012) 11 SCC 745
63. (2006) 12 SCC 211
64. (1982) 3 SCC 328
65. 1990 (Supp) SCC 59
66. (Common order in W.P. No.32710 of 2014 & batch dated 02.03.2015)
67. (2013) 8 SCC 664
68. (1974) 1 SCC 645
69. (1975) 3 SCC 722
70. 1954 SCR 418
71. AIR 1966 SC 740
72. (1969) 1 SCC 10
73. (1974) 4 SCC 573
74. 1943 FCR 49
75. AIR 1951 SC 174
76. (1974) 3 SCC 600
77. ILR 1972 AP 1025
- 78) (1975) 3 SCC 710

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

W.P.No.8819 of 2015

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

A Writ of Habeas Corpus, is sought for the detenu Sri Nimma Mahesh @ Potti Mahesh S/o. Nimma Narayana now detained in Central Prison, Rajahmundry, East Godavari District, to be produced before this Court, and for his being released forthwith after declaring his detention as illegal and unconstitutional.

The facts, to the limited extent necessary, are that Sri N. Mahesh was detained in preventive custody by the District Collector and District Magistrate, Chittoor, by proceedings dated 09.02.2015, on the ground that he was a "goonda" within the meaning of Section 2(g) of the A.P. Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986); his activities were dangerous to forest wealth, and prejudicial to the maintenance of public order; and it was necessary to prevent him from further indulging in such type of activities. The order of detention was approved by the Government vide G.O.Rt.No.488 dated 18.02.2015. On the case of the detenu being placed before it for its consideration, the Advisory Board opined on 11.03.2015 that there was sufficient cause for his detention. Thereafter the Government, in the exercise of its powers under Section 12(1) read with Section 13 of Act No.1 of 1986, confirmed the order of detention by G.O.Rt. No.943 dated 24.03.2015, for a period of 12 months from the date of his actual detention i.e. 12.02.2015. The grounds of detention refer to six incidents which are said to have taken place between

08.02.2014 and 09.11.2014. It is the case of the petitioner that, from out of six cases referred to in the order of detention, the involvement and participation of the detenu is shown in five cases based on the confession statements of persons, who are strangers to him, and his direct involvement is alleged only in the sixth case; the detenu was in the custody of Chittoor Task Force Police on 02.11.2014 in Crime No.290 of 2014 of Punganur Police Station; and the order of detention was passed while he was in judicial custody.

Elaborate submissions were put forth both by Sri D. Purnachandra Reddy, Learned Counsel for the petitioner, and the Learned Advocate General for the State of Andhra Pradesh appearing on behalf of the respondents. It is convenient to examine the rival contentions under different heads.

I. ARE NORMAL LAWS ADEQUATE, AND RESORT TO PREVENTIVE DETENTION NOT JUSTIFIED?

In the Writ Petition it is stated that the order of detention refers only to violation of the statutory provisions under the Forest Act, in committing theft of red sanders; and, at the most, the alleged offence may attract the penal provisions of the Forest Act, and it cannot be said that it would affect public order. In the counter-affidavit, filed in reply thereto, it is stated that the provisions of Act 1 of 1986 were invoked to prevent the detenu from further indulging in theft of red sander wood which is an endangered and endemic species; the detention order was passed against the detenu with a view to prevent him from indulging further in such unlawful activities; he had been indulging in the offences of illicit cutting, storing and transportation of red sanders; such activities of wilful destruction of red sanders had caused damage to public property, besides tremendous loss of national wealth, depletion of green cover resulting in adverse ecological imbalances having ramifications on the health and well being of the public in and around the Seshachalam forest area; such activities would affect public order; and it could not be said that theft of red sanders wood does not affect public order, and it may come under penal provisions of forest laws.

Sri D. Purnachandra Reddy, Learned Counsel for the petitioner, would submit that as the normal laws are adequate to deal with the offences allegedly committed by the detenu, recourse to preventive detention laws is illegal. On the other hand the Learned Advocate General, appearing on behalf of the State of Andhra Pradesh, would submit that the question whether a person should be detained preventively is a matter for the detaining authority to consider; as the satisfaction of the detaining authority in this regard is subjective, this Court would not sit in judgment over such satisfaction; the question whether the ordinary laws would suffice to deal with the situation, or recourse should be had to preventive detention laws, are matters for the detaining authority to consider; and, despite existence of the ordinary laws, a person can be preventively detained.

The personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which are therefore required to be exercised with due caution and on proper appreciation of the facts as to whether such acts had, in any way, sought to disturb public order warranting preventive detention. (**Munagala Yadamma v. State of A.P.; Yumman Ongbi Lembi Leima v. State of Manipur; K. Nageswara Naidu v. Collector & Distt. Magistrate**). The law of preventive detention must be strictly construed, and should not ordinarily be used for clipping the wings of an accused, if criminal prosecution would suffice. (**Kamarunnissa v. Union of India; Vijay Narain Singh v. State of Bihar; Dharmendra Suganchand Chelawat v. Union of India**).

The arrest of a person, his later being enlarged on bail, steps being initiated to prosecute him under the Code of Criminal Procedure, and a first information report being lodged, is no bar against the District Magistrate issuing an order under the Preventive Detention Laws. (**The Secretary to Government v. Nabila**). Preventive detention involves detaining a person without trial in order to prevent him/her from committing certain types of offences. Such detention is no substitute for the ordinary law, and does not absolve the investigating authorities of their normal functions of investigating crimes, which the detenu may have committed. Preventive detention, in most cases, is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. (**Munagala Yadamma**¹; **K. Nageswara Naidu**³).

Ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature, and can be dealt with under the ordinary law. (**Ramesh Yadav v. District Magistrate, Etah Munagala Yadamma**¹; **Kamarunnissa**⁴). If the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will, in view of Articles 19 and 21 of the Constitution of India be illegal. (**Rekha v. State of T.N.; K. Nageswara Naidu**³).

Reliance placed by the Learned Advocate General, on **G. Reddeiah v. Govt. of A. P.**, in support of his submission that smuggling of red-sanders wood justifies an order of preventive detention being passed, is misplaced. In **G. Reddeiah**¹⁰, the Supreme Court held that, in view of the enormous activities of the detenu violating various provisions of the IPC, the A.P. Act and the Rules, his continuous and habitually pursuing of the same type of offences, damaging the wealth of the nation, taking note of the abundant factual details as available in the grounds of detention, and also the fact that all the procedures and statutory safeguards had been fully complied with by the detaining authority, the earlier three-judge bench decision in **Rekha**⁹ was not applicable to the case before it.

In **K. Nageswara Naidu**³, a Division bench of this Court, following the two judge bench judgment of the Supreme Court in **G. Reddeiah**¹⁰, dismissed the Writ Petition and upheld the order of detention. On its jurisdiction being invoked the Supreme Court held that, when the Division Bench of the A.P. High Court rendered its decision, the decisions of the Supreme Court, in **Yumman Ongbi Lembi Leima**² and **Munagala Yadamma**¹, were not available, though the decision in **Rekha v. State of T.N.** was; when the decision of a three-Judge Bench in **Rekha**⁹ was available on the same issue, judicial discipline demanded that the Division Bench should have followed the same; judicial discipline is one of the fundamental pillars on which the judicial edifice rests; and, if such discipline is eroded, the entire edifice will be affected.

Whenever an order, under a preventive detention law, is challenged one of the questions the court must ask, in deciding its legality, is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. (**Rekha**⁹). If a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law will not be able to deal with the situation, then, and only then, the preventive detention order may be taken recourse to. (**Rekha**⁹; **K. Nageswara Naidu**³).

In examining the question whether the ordinary laws of the land would have sufficed, and whether recourse to preventive detention was unnecessary, it must be borne in mind that the compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens, would lose their meaning, provide the justification for the laws of preventive detention. These Laws posit that an individual's conduct, prejudicial to the maintenance of public order, provides grounds for satisfaction for a reasonable assessment of possible future manifestations of similar propensities on the part of the offender. (**Commissioner of Police v. C. Anita**). The object of the law of preventive detention is not punitive, but is only preventive. In preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability. (**Nabila**⁷; **Haradhan Saha v. State of West Bengal**; **K. Nageswara Naidu**³).

The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of the detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. Preventive detention, an anticipatory measure, is resorted to when the executive is convinced that such detention is necessary to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law. (**C. Anita**¹²). In preventive detention no offence is proved, and the justification of such detention is suspicion or reasonable probability. (**Rekha**⁹; **State of Maharashtra v. Bhaurao Punjabrao Gawande**). The order of detention is based on a reasonable prognosis of the future behaviour of a person based on his past

conduct in the light of surrounding circumstances. (**Haradhan Saha**¹³; **Nabila**⁷). The power of preventive detention is exercised in reasonable anticipation. It may or may not relate to an offence. It does not overlap with the prosecution even if it relies on certain facts for which prosecution may be, or may have been, launched. An order of preventive detention may be made before or during prosecution. It may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (**Haradhan Saha**¹³).

Bearing the aforesaid principles in mind, let us now examine whether the detaining authority was justified in arriving at the satisfaction that resort to preventive detention was necessary, and ordinary laws of the land did not suffice to prevent such acts which, according to him, were prejudicial to public order. In the grounds of detention the detaining authority observed:

“.....He is a very intelligent and cunning man and many times he used manage the things over phone only and change the cell numbers frequently to avoid surveillance over his phone by police. Number of times he escaped from police arrest by acting wisely. Police and Forest officials conducted number of special raids to apprehend him but, he could escape tactfully. But, on 09.11.2014 at 1.30 PM he was arrested in Cr.No.290/2014 of Punganur PS while he was transporting red sander illegally and 08 Red Sandal Logs weighing about 217 kgs, one TATA – 407 pickup bearing Regn.No.AP02-TB-1605, one sickle and Cash Rs.9,673/- and at present he is lodged in Sub-Jail, Madanapalle. If he is released on bail, again he will go for underground and continue his illegal activities. He doesn't have any respect towards law and his activities could not be controlled just by invoking the normal legal procedure.

Red Sanders – Our National Heritage:-

Red Sanders (Pterocarpussantalinus) is an endemic to Seshachalam Hills and Veligonda Hills of Chittoor, Kadapa, Nellore and Kurnool Districts and nowhere in the World it is found for which reasons alone it can be justly called our National Wealth. The Heart-wood of Red Sanders possesses enormous economic significance as it is highly valued in Japan and other Far-Eastern Countries as a cultural icon. Studies have revealed that the heart wood of Red Sanders is primarily used in the manufacture of **Shamosin** and **KOTO**, the traditional Musical Instruments which are used as an inseparable accompaniment in Japanese traditional Matrimonies. **Thus Red Sanders heart wood has a very high export value. Its value is conservatively estimated between Rs.10.00 Lakhs to Rs.15.00 Lakhs in Indian currency.** Red Sanders heart-wood, Chips, butt-end Saw dust find enormous applications in traditional medicine. Art and Artefacts, agricultural implements and dyeing industries. The heart wood of Red Sanders is a collector plant of **Cadmium** and **Strontium** (Radioactive elements) and this fact is being visualised as having applications as control rods and moderators in Nuclear Reactors which aspect is being presently investigated by the A.P.Forest Department in conjunction with **Bhaba Atomic Energy Research Centre (BARC)**, Trombay and **(IFGTB) Institute of Forest Genetics and Tree Breeding**, Coimbatore, Tamilnadu.

Thus the importance of Red Sanders heart-wood and its endemism to Chittoor District cannot be

undervalued. **The Red Gold of Andhra Pradesh the pride has Ecological and Economical significance and this species is listed as an Endangered species in the Red list of UNESCO and the CITES Secretariat alerted various Governments and Agencies about the large scale smuggling of Red Sanders Wood from India which is included in Appendix – II of the Convention.** The Government of Andhra Pradesh have fittingly made offences involving Red Sanders Wood as non-compoundable. **Civil society shall loose an important National Wealth if the illicit smuggling of Red Sanders Wood is not curbed.** The loss of Red Sanders through illicit smuggling not only has an adverse economic impact but also results in a blow to the social pride of the populace in Chittoor District. In **Article 48-A** of the **Constitution of India** under **Part-IV** of Directive Principles of State Policy, it is laid down that “**The State shall endeavour to protect and improve the Environment and safeguard the Forests**”. The Forests are the wealth of the Nation and the officers entrusted to enforce the Laws shall act to give effect to **Article 48-A** of the **Constitution of India**.

Thus it is imperative that the District Administration and the Law Enforcement Agencies should spare no efforts in protecting this National Wealth which is the pride of our District. Smugglers involved in Red Sanders offences need to be harshly and exemplarily dealt with. Under Article – 51 – A (g) of the Constitution of India in Part-IV – A of Fundamental Duties, “Every Citizen is enjoined with a duty to Protect and improve the Natural Environment including Forests”. The said **Sri Nimma Mahesh @ Potti Mahesh, age 39 years, S/o Nimma Narayana, Caste by Baliya, D.No.3-145-8-A-16-3, Prashanth Nagar, Madanapalli Town and Mandal, N/o Papepalli (Vill), Peddamandyam Mandal, Chittoor District, Andhra Pradesh State** has acted in under disregard to the duties of a Citizen specified by the Constitution by continuously resorting to the smuggling of Red Sanders Wood thereby causing heavy destruction to the valuable Forests of our District. It is in this context that the commission of a series of offences involving Red Sanders by **Sri Nimma Mahesh, age 39 years, S/o Nimma Narayana, Caste by Baliya, D.No.3-145-8-A-16-3, Prashanth Nagar, Madanapalli Town and Mandal, N/o Papepalli (Vill), Peddamandyam Mandal, Chittoor District, Andhra Pradesh State** as detailed above need to be perceived.

RELEVANCE OF SRI VENKATESWARA NATIONAL PARK, TIRUPATI.

The Government Forest areas to an extent of 525.97 Sq.Kms. around the Tirumala Hills were declared as Sri Venkateswara Wild Life Sanctuary vide GO.Ms.No.59 EFS&T (For-III) Dept., Dt.: 13.05.1998. Within the above Sanctuary an area of 353.63 Sq.Kms. is declared as **Sri Venkateswara National Park** vide GO.Ms.No.58 EFS & T (For-III) Dept., Dt: 13.05.1998 under Wild Life (Protection) Act, 1972. All acts such as destroying, exploiting or removing any **Wild Life including Forest Produce** from a sanctuary / National Park or destroying, damaging, diverting the habitat of any Wild animal by any act what so ever is an offence as per Wild life (Protection) Act, 1972.

The Forests in S.V.Sanctuary abound in an important endangered and endemic species called Red Sanders scientifically known as ‘**Pterocarpussantalinus**’. The Red Sanders occurs in Chittoor, Kadapa parts of Nellore and Kurnool Districts. It is endemic to this area and nowhere in the World it is found naturally Red Sanders wood is the most wanted wood in Foreign countries like Japan, Singapore, Malaysia, China, Germany, U.K. and other European countries where it is said to be used in manufacture of Musical instruments, medicines and in Atomic Reactors.

Crime against Society:

The illicit and rampant smuggling of the precious Red Sanders timber by **Sri Nimma Mahesh @ Potti Mahesh, age 39 yers, S/o Nimma Narayana, Caste by Baliya, D. NO.3-145-8-A-16-3, Prashanth Nagar, Madanapalli Town and Mandal, N/o Papepalli (Vill), Peddamandyam Mandal, Chittoor District, Andhra Pradesh State** is thus virtually a gross loot of the National Wealth. On an estimate he stands responsible for the destruction of 64 logs Red Sander Trees total weighing about 1394 kgs spread over, Tirupati hill R.F. and Anagapatla R.F. in Chittoor District. Thus there is a tremendous loss of National wealth besides depletion of green cover resulting in adverse Ecological imbalances having ramifications on the health and wellbeing of

the population in Chittoor District. The depletion of tree cover and subsequent ecological imbalances also adversely affect the Micro-climate of the region resulting in extremities in Temperature and scanty Rain fall. This will have adverse impact on the Agriculture incomes of the rural folk which will again act adversely on the economic status of the District.....” (emphasis supplied)

It is evident from the aforesaid observations of the detaining authority, in the grounds of detention, that red sanders is endemic to Seshachalam and Veligonda Hills of Chittoor, Kadapa, Nellore and Kurnool Districts; as they are not available anywhere else in the World, they are justly called our National Wealth; it has enormous economic significance; it is listed as an endangered species in the red list of UNESCO; various Governments and Agencies had been alerted of the large scale smuggling of red sanders wood from India; civil society would lose an important national wealth, if the illicit smuggling of red sanders wood was not curbed; it was obligatory for the district administration, and the law enforcement agencies, to protect this national wealth; the detenu had continuously resorted to smuggling of red sanders, and had thereby caused heavy destruction to the valuable forests in the districts; on an estimation the detenu was responsible for destruction of 64 logs of red sander trees weighing about 1394 KGs. spread over Tirupati hills reserve forest, and Anagapatla reserve forest, in Chittoor District; this had resulted in depletion of tree cover; the consequent ecological imbalances also adversely affected the micro-climate of the region resulting in extremities in temperature, and scanty rain fall; it also had an adverse impact on the agriculture incomes of the rural folk, and an adverse effect on the economic status of the district.

While felling of a branch of a tree, or smuggling of a couple of logs may justify action being restricted only to the ordinary penal laws, can such large scale degradation of red sanders forests, and large scale smuggling of red sander wood from this area which had endangered the very existence of this species of trees, be curbed by the ordinary laws of the land? The detaining authority has also recorded his satisfaction that such large scale felling and smuggling of red sanders timber had resulted in ecological imbalance; depletion of tree cover had also adversely affected the micro-climate of the region resulting in extremities in temperature and scanty rain fall. Can such unmindful and large-scale destruction of precious forest wealth be curbed or curtailed by the ordinary forest laws?

While the Court is no doubt obligated to examine the question whether or not the ordinary laws of the land are sufficient to deal with the situation, it cannot also lost sight of the fact that the Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the preventive detention law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. (**Khudiram Das v. State of W.B.**; **State of Madras v. V.G. Row**; **Rex v. Halliday**). The Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. (**Mohd. Yousuf Rather v. State of J&K**). The satisfaction of the detaining authority, that the detenu must be kept in preventive custody to prevent him from indulging in the aforesaid acts which the detaining authority considered to be prejudicial to public order, is based on information which discloses the far-reaching consequences of destruction of precious forest cover. Satisfaction of the authority, in coming to the conclusion that such activities are prejudicial to public order and cannot be curbed by the ordinary penal laws of the land, cannot be said to be without justification necessitating interference with the order of detention on this ground. The challenge to the order of detention, on this ground, necessitates rejection.

II. NO MATERIAL BEFORE THE DETAINING AUTHORITY TO ARRIVE AT THE SATISFACTION THAT THE DETENU WAS LIKELY TO BE RELEASED ON BAIL: ITS EFFECT:

In the Writ Petition filed before this Court, it is stated that the detenu was in

judicial custody in all the six cases referred to in the grounds of detention; no bail application was filed, on behalf of the detenu, in any of the six cases; and there was no necessity to pass the order of detention. In the counter-affidavit, filed in reply thereto by the detaining authority, it is stated the detenu had filed bail applications in three cases i.e., Cr. No.17 of 2014 of Yadamarri police station, Cr. No.72 of 2014 of Y.V. Palem police station and Cr. No.55 of 2014 of Rompicherla police station wherein bail was granted; it could not be said that there was absolutely no necessity to pass the order of detention against the detenu; it was false to state that there was no possibility of detenu coming out from jail, and he did not file any bail application for his release; though he was enlarged on bail in three crimes, still he did not mend his illegal activities, and continued the same; and hence it necessitated an order of detention being passed against the detenu, basing on the material placed before him, in order to curb the illegal activities of the detenu.

Sri D. Purnachandra Reddy, Learned Counsel for the petitioner, would submit that, except for a vague reference in the grounds of detention to the likelihood of the detenu being released on bail, there was no other material before the detaining authority for him to arrive at the satisfaction that there was a possibility or likelihood of the detenu being released on bail; the counter affidavit does not refer to any material based on which the detaining authority was satisfied that there was a likelihood of the detenu being released on bail; mere *ipsi dixit* of the detaining authority would not suffice; it is only if there is material on record, based on which the satisfaction is arrived at, can the statement in the grounds of detention, that the detenu is likely to be released on bail, be justified; the possibility of the detenu being released on bail, as stated in the order of detention, is sought to be justified, in the counter affidavit, with reference to bail having been granted to the detenu; bail was granted to the detenu long after the detention order was passed; when the order of detention was passed the detenu was not granted bail in any of the six cases, in which he was allegedly involved in, necessitating his being preventively detained; and the averment in the counter affidavit that he was enlarged on bail in three cases, and he has not submitted his representation, is patently false. On the other hand Learned Advocate-General, for the State of Andhra Pradesh, would submit that the detaining authority has detailed in his counter affidavit the reasons which weighed with him in coming to the conclusion that the detenu was likely to be released on bail; and this is amply justified by the fact that the detenu was released on bail in

three cases.

In **Meena Jayendra Thakur v. Union of India**, the affidavit of the detaining authority indicated that not only the fact that the detenu was in custody on being arrested in some other case was brought to the notice of the detaining authority, but also that the detaining authority, on consideration of all relevant material including the fact that there may be a possibility of the detenu being released on bail, thought it fit to have the order of detention served on the detenu. The Supreme Court held that this was not a case where the detaining authority had not applied his mind to the relevant material, but a case where the detaining authority had considered all the relevant material, and had decided and directed to have the order executed.

Subsisting custody of the detenu, by itself, does not invalidate the order of preventive detention, and the decision in this regard must depend on the facts of the particular case. (**Union of India v. Paul Manickam**). It is not the law that no order of detention can validly be passed against a person in custody under any circumstances. (**Sanjay Kumar Aggarwal v. Union of India; Kamarunnissa**⁴). If the facts and circumstances of the case so demand, resort can be had to the law of preventive detention even if the person is in custody. 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 this regard, the order would be valid. (**Kamarunnissa**⁴; **Paul Manickam**²⁰).

The detaining authority must show its awareness of the subsisting custody of the detenu, and take that factor into account while making the order. If the detaining authority is reasonably satisfied, with cogent material, that there is a 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 in such prejudicial activities, the detention order can be validly made. (**Paul Manickam**²⁰). Factors, such as the detenu being in jail, must be objectively considered. If there are causal

connections, and if a bona fide belief is formed, then there is nothing to prevent an order of preventive detention being served on a person who is in jail, provided the detaining authority is satisfied that there is an imminent possibility of his being released and set at liberty. (**Suraj Pal Sahu v. State of Maharashtra**).

Before an authority can legitimately come to the conclusion that the detention of a person is necessary, to prevent him from acting in a prejudicial manner, the authority must be satisfied that, if the person is not detained, he would act in a prejudicial manner, and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail, it cannot be rationally postulated that, if he is not detained, he would act in a prejudicial manner? At the point of time, when an order of detention is to be served on a person, it must be patent that the said person would act prejudicially if he is not detained, and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person, for the purpose of preventing him from acting in a prejudicial manner, is the basis of the order of detention. (**Rameshwar Shaw v. District Magistrate, Burdwan; Jotha Viswanadh v. Chief Secretary, Govt. of A.P.**). As preventive detention is intended to prevent a detenu from acting in any manner prejudicial to public order, ordinarily it need not be resorted to if the detenu is in custody unless the detaining authority has reason to believe that the subsisting custody of the detenu may soon terminate on his being released on bail, and having regard to his recent antecedents he is likely to indulge in similar prejudicial activities, unless he is prevented from doing so by an appropriate order of preventive detention. (**N. Meera Rani v. State of Tamil Nadu; Kamarunnissa⁴**).

In case the detenu is already in custody, the detaining authority should apply his mind and show his awareness in this regard in the grounds of detention. The necessity of keeping such person under preventive detention should be clearly indicated. (**Paul Manickam²⁰; Yumman Ongbi Lembi Leima²**). The detaining authority must be aware, when he is passing the order of detention, that the detenu is in custody, and that cogent and relevant material disclose the necessity for making an order of detention. (**Binod Singh v. District Magistrate, Dhanbad**;

Ramesh Yadav⁸; Vijay Narain Singh⁵; Dharmendra Suganchand Chelawat⁶; Kamarunnissa⁴; Abdul Razak Abdul Wahab Sheikh v. S.N. Sinha, Commr. of Police).

Where the concerned person is in jail, at the time when an order of detention is passed against him, and is not likely to be released for a fair length of time, it may be possible to contend that there can be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise public order (**Haradhan Saha¹³; Nabila⁷**), and the power of preventive detention should not be exercised. If there is no indication that the factum, of the order of detention having been served upon the detenu when he was in jail or the detenu might be released or there is a possibility of his release, was taken into consideration by the detaining authority properly and seriously before service of the order, the detention order is rendered invalid. (**Binod Singh²⁶; Meena Jayendra Thakur¹⁹**). The detaining authority must be reasonably satisfied, with cogent material, that there is a likelihood of the detenu's 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 in such prejudicial activities. (**Paul Manickam²⁰; Yumman Ongbi Lembi Leima²**). 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. (**Union of India v. Paul Manickam²⁰**). If the grounds of detention do not show awareness of this fact, the detention order would suffer from non-application of mind, and would be vitiated thereby. (**M. Ahamedkutty v. Union of India**).

Where the grounds of detention merely speak of the "possibility" of the detenu's release in case he moves a bail petition, and does not state that such release is likely or that it is imminent, and there is no material before the detaining authority upon which he was satisfied that the petitioner was likely to be released or that such release was imminent, the detention order is liable to be quashed. (**Rivadeneyta Ricardo Agustin v. Govt. of the NCT of Delhi; Kamarunnissa⁴**). Exercise of the extraordinary power, of detaining an individual, in contravention of

the provisions of Article 22(2) of the Constitution, is not warranted where the grounds of detention do not disclose existence of any material before the detaining authority to support his conclusion that there was every likelihood of the detenu being released on bail in connection with the cases in respect of which he had been arrested. The power, vested with the detaining authority, should be invoked and implemented in a justifiable manner as a detention order is an exception to the provisions of Articles 21 and 22(2) of the Constitution. (**Yumman Ongbi Lembi Leima**²; **K. Nageswara Naidu**³).

In the order of detention dated 09.02.2015, the detaining authority has recorded that the information provided to him revealed that, if the detenu was allowed to be free in general public, he would instigate the youth to turn as habitual offenders, in cutting of valued Red Sanders, by organising them as mafia groups in society. The grounds of detention records that, at present, the detenu was lodged in Sub-Jail, Madanapalle and, if he is released on bail, he would go underground and continue his illegal activities. Neither the order nor the grounds of detention refer to any material having been placed before the detaining authority on the basis of which had arrived at such a subjective satisfaction. In **Rekha**¹¹, a two judge bench of the Supreme Court opined that there seemed to be a conflict between **T.V. Sravanan v. State**; **A. Shanthi v. Govt. of T.N.** and **Rajesh Gulati v. Govt. of NCT of Delhi** on the one hand wherein it was held that, if no bail application is pending and the detenu is already in jail in a criminal case, the detention order under the preventive detention is illegal; and **A. Geetha v. State of T.N.** and **Ibrahim Nazeer v. State of T.N.** on the other wherein it was held that, even if no bail application is pending but if in similar cases bail has been granted, then this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order; and, in their opinion, the matter should be considered by a larger Bench for resolving this difference of opinion.

In **Rekha**⁹, a three judge bench of the Supreme Court held that, if details are given by the detaining authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, it could then

be argued that there is a likelihood of the accused being released on bail, because it is the normal practice of most courts that, if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However a mere ipse dixit statement, in the grounds of detention, regarding the alleged imminent possibility of the accused coming out on bail, without there being any reliable material to that effect, vitiated the detention order.

Ordinarily a detention order should not be passed merely on the ground that the detenu was likely to be enlarged on bail. In such cases the proper course would be to oppose the bail application and, if granted, challenge the order in the higher forum, and not circumvent or supersede it by passing an order of detention (**Ramesh Yadav**⁸; **Kamarunnissa**⁴; **Suraj Pal Sahu**²²). An order for detention would be valid if the grounds of detention show that (i) the detaining authority is aware of the fact that the detenu is already in detention; and (ii) there are compelling reasons justifying such detention despite the fact that the detenu is already in custody. The expression “compelling reasons”, in the context of making an order for detention of a person already in custody, implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that, after his release from custody, he would indulge in prejudicial activities; and it is necessary to detain him in order to prevent him from engaging in such activities. (**Dharmendra Suganchand Chelawat**⁶). If the authority passes an order, after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and, if bail is granted notwithstanding such opposition, to question it before a higher court. (**Kamarunnissa**⁴).

The mere possibility of the court granting bail is not sufficient, nor is a bald statement that the detenu would repeat his criminal activities enough, to pass an order of detention unless there is credible information and cogent reason apparent on the record that the detenu, if enlarged on bail, would act prejudicially. (**Shashi**

Aggarwal v. State of Uttar Pradesh; Kamarunnissa⁴; Anand Prakash v. State of Uttar Pradesh; Dharmendra Suganchand Chelawat⁶). In spite of rejection of the bail application by a Court, it is open to the detaining authority to come to his own satisfaction based on the contents of the bail application keeping in mind the circumstances that there is likelihood of the detenu being released on bail. The words "likely to be released" connote chances of being bailed out, in case there be a pending bail application or in case, if it is moved in future, it is decided. The type of crime to be dealt with under the criminal law, the contents of the bail application, each separately or all of them composite, would constitute relevant material for arriving at a conclusion. (**Ahamed Nassar v. State of Tamil Nadu**).

The inference, of "imminent possibility" of the detenu coming out on bail, should be drawn from the material available on record. In the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. (**T.V. Saravanan³⁰; A. Shanthi³¹**). Before passing a detention order, in respect of the person who is in jail, the concerned authority must reach the satisfaction on the basis of cogent material, that there is a real possibility of the detenu being released on bail and further, if released on bail, the material on record reveals that he will indulge in prejudicial activities necessitating his preventive detention. (**Binod Singh²⁶; Ramesh Yadav⁸; Kamarunnissa⁴**). Except to state that the detenu was lodged in jail and, if he is released on bail, he would go underground and continue his illegal activities, neither the counter-affidavit nor the grounds of detention disclose either the basis or the material on which the detaining authority arrived at the satisfaction that the detenu was likely to be released on bail.

Reference in the counter-affidavit, to the detenus being granted bail in the three criminal cases, is misplaced as the detenu was granted bail in the said three criminal cases long after the order of detention was passed on 09.02.2015. While the order of detention was passed on 09.02.2015, bail in Cr. No.55 of 2014 was granted on 26.02.2015, bail in Cr. No.72 of 2014 was granted on 04.03.2015 and bail in Cr. No.17 of 2015 was granted on 31.03.2015. The satisfaction of the detaining authority, on whether or not to detain a person in preventive custody, must be arrived at on the basis of material existing on the date on which the detention

order was passed, and cannot be justified by way of a counter-affidavit based on subsequent events. The counter-affidavit makes no reference to any other material (such as the bail applications, if any, filed by the detenu before the date of the order of detention etc) based on which the detaining authority arrived at the subjective satisfaction that the detenu was likely to come out on bail, in the bail applications pending, in the three cases; and, consequently his indulging in acts prejudicial to public order.

There is a real possibility of a person being released on bail, who is already in custody, *provided he has moved a bail application which is pending*. 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. The exception to this rule is where a co-accused, whose case stands on the same footing, has been granted bail. In such cases, the detaining authority can reasonably conclude that there is a 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. Details of such alleged similar cases must be given, and a bald statement of the detaining authority would not suffice. (**Rekha**⁹). As it is evident that, on the date on which the order of detention was passed i.e. 09.02.2015, the detenu was not granted bail and, as the counter-affidavit makes no reference to any other material, based on which such subjective satisfaction was arrived at that the detenu was likely to come out on bail, the order of detention is rendered invalid and is liable to be set aside.

III. NON-CONSIDERATION OF REPRESENTATION OF THE DETENU EITHER BY THE GOVERNMENT OR THE DETAINING AUTHORITY: ITS EFFECT

Sri D. Purnachandra Reddy, Learned Counsel for the petitioner, would submit that a common representation dated 20.02.2015 was addressed, through the Superintendent, Central Prison, Rajahmundry, to the Chief Secretary, Government of A.P., the Advisory Board and the District Collector and District Magistrate, Chittoor; the order of confirmation in G.O.Rt.No.943 dated 24.03.2015 records the detenu having submitted a representation to the Advisory Board; the fact that the

detenu had submitted a representation to the Advisory Board is reiterated in the counter affidavit, yet the respondent falsely states that no representation was submitted by the detenu to the Government; and, even if it is presumed that the Government need not consider the representation before an order of confirmation is passed, the fact that the petitioner's representation was not considered by the Government, even after the confirmation order dated 24.03.2015, till date would render the continued detention of the detenu illegal, and necessitate his being released from detention forthwith. On the other hand the Learned Advocate-General, for the State of Andhra Pradesh, would submit that as the representation, submitted by the detenu, was prior to the order of confirmation, the respondents are not obliged to consider such a representation, even if it had been filed.

The authority exercising the power, to detain without trial, must afford an opportunity to the detenu to convince the Government/detaining authority that the power was not justifiably exercised or no occasion arose for exercise of the power. In a punitive detention, which is the end product of a trial, the convict participates and has full opportunity to present his side of the case. Preventive detention does not afford any opportunity to the detenu to explain his side of the matter before he is deprived of his liberty and therefore, soon after the detenu is deprived of his personal liberty, the Statute makes it obligatory on the authorities concerned to afford him the earliest opportunity to represent his side of the case. (**Vijay Kumar v. State of J&K**). *The right to make a representation against the detention order flows from the constitutional guarantee enshrined in Article 22(5) which casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires.* (**Amir Shad Khan v. L. Hmingliana; Kundanbhai Dulabhai Shaikh v. District Magistrate, Ahmedabad**). The word "earliest", which qualifies the opportunity, must equally qualify the corresponding obligation of the State to deal with the representation, if and when made, as expeditiously as possible, (**Vijay Kumar**³⁸), or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning. (**Kundanbhai Dulabhai Shaikh**⁴⁰). The question is not whether the detenu will be prejudicially affected in securing his release by his representation, but whether his constitutional safeguard has been infringed. (**Ram Krishan Bhardwaj v. State of Delhi**).

The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of the Constitution. It is a constitutional mandate commanding the concerned authority, to whom the detenu submits his representation, to consider the representation and dispose it of as expeditiously as possible. The words “***as soon as may be***”, occurring in Article 22(5), reflects the concern of the framers of the Constitution that the representation should be expeditiously considered, and disposed of with a sense of urgency without avoidable delay. Unexplained delay, in the disposal of the representation, is in breach of the constitutional imperative, and would render the continued detention impermissible and illegal. (**K.M. Abdulla Kunhi v. Union of India; Jayanarayan Sukul v. State of W.B.; Khairul Haque v. State of W.G; Francies Coralie Mullin v. UT of Delhi; Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police and Aslam Ahmed Zahire Ahmed Shaik v. Union of India**). The fundamental right of the detenu, to have his representation considered by the Government, would be rendered meaningless if the Government does not deal with the matter expeditiously, but at its own sweet will and convenience. It is imperative that, when the liberty of a person is in peril, immediate action should be taken by the authorities concerned. (**Jayanarayan Sukul**⁴³).

It is the duty of the Court to ensure that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not defeated by the delay caused in consideration of the representation. When the delay is caused because of *indifference or avoidable reasons, the detention becomes vulnerable*. (**Pebam Ningol Mikoi Devi v. State of Manipur; Union of India v. Laishram Lincola Singh**). The requirement of each day's delay, in dealing with the representation, being adequately explained is meant to emphasise the expedition with which the representation must be considered. (**L.M.S. Ummu Sabeema v. State of Kerala; Abdul Nasar Adam Ismail v. State of Maharashtra**). The authority, empowered to make an order of detention, should adopt a procedure calculated towards expeditious consideration of the representation. The representation must be taken up as soon as it is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. (**Abdul Nasar Adam Ismail**⁵¹; **Rajammal v.**

State of T.N.; Kundanbhai Dulabhai Sheikh⁴⁰).

A common representation dated 20.02.2015 was addressed by the detenu, through the Superintendent, Central Prison, Rajahmundry, to (1) the Chief Secretary, Government of A.P. (2) The Advisory Board and (3) the Collector and District Magistrate, Chittoor (detaining authority). While the respondents deny receipt of the representation, either by the Government or the detaining authority, the order of confirmation of detention, in G.O.RT. No.943 dated 24.03.2015, records that the detenu's case was reviewed by the Advisory Board, on 11.03.2015, and after having perused his representation, the Advisory Board had opined that there was sufficient cause for detention of the detenu. Even in his counter-affidavit, the detaining authority states that, basing on the recommendations of the Advisory Board, G.O.RT. No.943 24.03.2015 was issued confirming the order of detention; the detenu had submitted a representation to the Advisory Board; the Advisory Board, after considering the representation of the detenu, had sent its recommendations to the Government; and the detenu had not made a representation to the Government.

Reasons for the delay must be indicated to the Court. Unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention. In that situation, the continued detention would be rendered illegal. (**Kundanbhai Dulabhai Shaikh⁴⁰; Sk. Abdul Karim v. State of W.B.; Durga Show, In re;; Jayanarayan Sukul⁴³; Sk. Hanif, Gudma Majhi & Kamal Saha v. State of W.G.; Raisuddin v. State of U.P.; Frances Coralie Mullin⁴⁵; Mohinuddin v. Distt. Magistrate; Rama Dhondur Borade⁴⁶; Aslam Ahmed Zahire Ahmed Shaikh⁴⁷; Mahesh Kumar Chauhan v. Union of India; Gazi Khan v. State of Rajasthan; State of T.N. v. C. Subramani; K.M. Abdulla Kunhi⁴²; Julia Jose Mavelly v. Union of India; Rashid Kapadia v. Medha Gadgil; Mohinuddin⁵⁷ and Harshala Santosh Patil v. State of Maharashtra**). No explanation is forthcoming in the counter affidavit as to how a common representation addressed to the Government, the Advisory Board and the detaining authority, and sent through the Superintendent of Jails, was received only by the Advisory Board, and neither by the

Government nor the detaining authority. As no explanation is forthcoming in this regard, it is evident that the detenu's representation has not been considered either by the Government or the detaining authority.

It is no doubt true that the Government is not obliged to consider the detenu's representation before the order of confirmation of detention. In the present case, while the representation was submitted on 20.02.2015, the order of confirmation of the detention was passed by the Government vide G.O.Rt.No.943 dated 24.03.2015. More than six months have since elapsed, for which there is no explanation much less any satisfactory explanation. The contention urged, in the counter-affidavit, is not that there was a justifiable delay in considering the detenu's representation, but that the said representation of the detenu had not been received either by the Government or the detaining authority. As it is evident, from the material on record, that this submission is not tenable, we can only conclude that there has been inordinate delay in considering the representation submitted by the detenu. The delay in disposal of the representation of the detenu would vitiate only his continued detention, and not invalidate the detention order. By reason of the delay, only further detention of the detenu is rendered illegal and unconstitutional. (**Abdul Nasar Adam Ismail**⁵¹; **Kundanbhai Dulabhai Shaikh**⁴⁰; **Mohinuddin**⁵⁷; **Rama Dhondur Borade**⁴⁶; **Devi Lal Mahto v. State of Bihar**; **Meena Jayendra Thakur**¹⁹). Consequently, the continued detention of the detenu is rendered illegal and unconstitutional. The order of detention is liable to be set aside on this ground.

IV. FURNISHING ILLEGIBLE DOCUMENTS RESULTS IN DENIAL OF THE DETENU'S RIGHT TO MAKE AN EFFECTIVE REPRESENTATION:

In the affidavit, filed in support of the Writ Petition, it is stated that the documents relied upon by the detaining authority, while passing the order of detention, were not properly supplied to him; some of the documents were illegible; some documents were not supplied with pagination; many documents were mixed up with each other; and the detenu was, thereby, denied his right to submit an effective representation to the competent authority. In the counter-affidavit, filed in reply thereto by the detaining authority, it is stated that the material supplied to the

detenu were very much visible; and, having acknowledged receipt of the same, the detenu cannot allege that the documents supplied to him were not legible.

Sri D. Purnachandra Reddy, Learned Counsel for the petitioner, would submit that a few pages, amongst the document supplied to the detenu, are illegible; and the detenu has, thereby, been denied the opportunity to make an effective representation against his continued detention. On the other hand the Learned Advocate-General for the State of Andhra Pradesh, would submit that supply of a few illegible pages is of no consequence; the detenu had confessed to committing the crime; and he was not disabled thereby from submitting a representation.

We asked the Learned Advocate General if he could read a few of the pages, in the documents, which we found illegible. Learned Advocate General would submit that a few illegible pages, among the several documents furnished, did not disable the detenu from submitting an effective representation, as the detenu was well aware of the gist of the allegations made against him and had, in fact, submitted a representation. If copies of the documents, supplied at the request of the detenu, are illegible, the safeguards provided by the Constitution must be held to have not been followed. (**Manjit Singh Grewal v. Union of India**). Failure to supply legible copies affects the right of the detenu to submit an effective representation, and renders his continued detention illegal. The challenge to the validity of the order of detention on this ground must be upheld, and the continued detention of the detenu must be declared illegal.

**V. WHERE THE DETAINING AUTHORITY IS INFLUENCED BY
EXTRANEOUS OR ERRONEOUS FACTORS - THE ORDER OF
DETENTION STANDS VITIATED:**

In the affidavit, filed in support of the Writ Petition, it is stated that, in all the cases, investigation is at the preliminary stage; in none of the cases, charge sheets were filed; the conclusion of the detaining authority that the detenu had been repeatedly involving himself in cases, even after charge sheets were filed against him, was incorrect; and the order of detention was liable to be set aside on this score. In the counter-affidavit, filed in reply thereto by the detaining authority, it is stated that it was false to allege that all the cases registered against the detenu are

at the preliminary stage of investigation; in fact, charge sheets were filed in Cr. No.55 of 2014 of Rompicherla P.S, and Cr. No.67 of 2014 of Ramasamudram P.S; and, in the remaining cases, investigation is going on.

Sri D. Purnachandra Reddy, Learned Counsel for the petitioner, would submit that the detention order suffers from non-application of mind, as the detaining authority records that charge sheets were filed, though they were not; the claim of the detaining authority, in his counter affidavit, that charge sheets were filed is vague and is bereft of any particulars; copies of the charge sheet have also not been placed before this Court; the very fact the detenu was granted statutory bail, in Crime No.155 of 2014 on 26.02.2015, shows that no charge sheet was filed when the order of detention was passed; and the satisfaction of the detaining authority that the detenu continues to indulge in such activities, despite charge sheets having been filed, reflects non-application of mind and necessitates the order being set aside. On the other hand the Learned Advocate-General, for the State of Andhra Pradesh, would submit that the very fact that, the counter affidavit refers to charge sheets having been filed, itself shows that the satisfaction recorded, in the order of detention, of charge sheets having been filed is true.

Whether the investigation is in a preliminary stage, or whether a charge sheet is filed, is also relevant information required to be apprised to the detaining authority and/or else the detaining authority can be misled into believing that, inspite of filing charge sheets, the detenu did not mend his ways inspite of having been involved in several cases. As charge sheets were not filed, the assumption of the detaining authority, in that respect to the contrary, vitiates the detention order. (**Saroj Mehandi v. Government of A.P.**). An administrative order, based on non-existent reasons, must be held to be infected with abuse of power. (**N. Sengodan v. State of Tamil Nadu; Bhut Nath Mete v. State of W.B**). In the grounds of detention the detaining authority observed that the detenue was repeatedly committing forest offences involving smuggling of red sanders; and he had not stopped his activities of committing the same type of offences even after cases and charge-sheets were filed against him.

No particulars have been furnished in the counter-affidavit, and no material

has been placed before us, regarding the number allotted to these charge sheets, and the date on which they were filed. Copies of the charge sheets have also not been placed before this Court. The very fact that the detenu was granted bail in Cr. No.155 of 2014 on 26.02.2015, under Section 167(2) Cr.P.C. on the ground that no charge sheet was filed, belies the submission of the detaining authority that charge sheets were filed in the aforesaid two criminal cases before the order of detention was passed. It is evident, therefore, that the satisfaction of the detaining authority, in passing the order of detention, was based on the misinformation that, despite charge sheets having been filed against him, the detenu continued to indulge in such illegal activities. As no charge sheets were filed by the date of the order of detention, the satisfaction of the detaining authority, to the contrary, is based on non-existent factors, and the order of detention is vitiated thereby.

VI. EVEN IF ONE OF THE GROUNDS OF DETENTION IS HELD TO BE ILLEGAL, THE DETENTION ORDER IS LIABLE TO BE SET ASIDE:

While the challenge to the order of detention, on the ground that normal laws would suffice and resort to preventive detention is not justified, must fail, the order of detention is vitiated as there was no material before the detaining authority in arriving at the satisfaction that the detenu was likely to be released on bail, as some of the documents supplied to the detenu were illegible resulting in denial of the detenu's right to make an effective representation, and as the order of the detaining authority suffers from non-application of mind for having taken into consideration erroneous facts that charge-sheets had been filed against the detenu when, in fact, no charge-sheet was filed. The detenu's continued detention is, thereby, rendered illegal.

Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. (**Dwarika Prasad Sahu v. State of Bihar; Shibban Lal Saxena v. State of U.P.; Ram Manohar Lohia v. The State of Bihar; Pushkar Mukherjee v. State of W.B;** and **Biram Chand v. State of U.P.**). A ground is said to

be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order. (**Mohd. Yousuf Rather**¹⁸; **Keshav Talpade v. King-Emperor**; **Tarapada De v. State of W.B.**; **Shibban Lal Saxena**⁷⁰; **Pushkar Mukherjee**⁷²; **Satya Brata Ghose v. Mr Arif Ali, District Magistrate, Sibasagar, Jorhat**; **K. Yadava Reddy v. Commissioner of Police, Andhra Pradesh**) . Where the order of detention is founded on distinct and separate grounds, if any one of the grounds are vague or irrelevant the entire order must fall. The satisfaction of the detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of such vague or irrelevant data. (**Ram Bahadur Rai v. State of Bihar**).

VII. CONCLUSION

The Writ Petition is accordingly allowed, the order of detention is quashed, and the detenu is set at liberty forthwith, provided he is not required to be kept in custody in connection with any other case/cases registered against him. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

S. RAVI KUMAR, J

Date: 06.10.2015.

Note: L.R. copy to be marked

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