

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

WEDNESDAY THE TWENTYEIGHTH DAY OF OCTOBER
TWO THOUSAND AND FIFTEEN

HONOURABLE THE ACTING CHIEF JUSTICE
DILIP B. BHOSALE
AND
HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION NO. 22672 OF 2015

Between:

Mr.Arif Khan

■ ■ ■

Petitioner

V/s.

The State of Telangana
Rep.by its Chief Secretary,
Secretariat, Hyderabad & Ors. ...

Respondents

Counsel for the Petitioner : Sri Amarnath Goud Thodupunuri

Counsel for the Respondents : GP for Home [TS]

HONOURABLE THE ACTING CHIEF JUSTICE
DILIP B. BHOSALE

AND

HONOURABLE SRI JUSTICE S.V. BHATT

—
WRIT PETITION No. 22672 OF 2015.

O R D E R : [Per the Hon'ble Sri Justice S.V. Bhatt]

The petitioner prays for writ of Habeas Corpus by challenging detention order No. C3/1127/2015, dated 26/03/2015 of second respondent and the confirmation of detention vide GO.Rt.No. 1537, GAD [L&O] Department dated 02/06/2015 of the first respondent, detaining one Arif [detenu] son of Abdul Rehman under section 12 [2] read with section 13 of the Telangana Prevention of Dangerous Activities of Bottleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 [Act No.1 of 1986] as illegal, unconstitutional and prays for release of the detenu.

2. Heard Sri Amarnath Goud, learned counsel for petitioner and learned Government Pleader for Home [TS] for respondents.

3. The second respondent in exercise of the powers conferred under section 3 [1] and [2] of Act No.1 of 1986 directed detention of the detenu. On the same day, the second respondent made available the grounds of detention to the detenu. From the grounds of detention, it appears that the detenu does not have license or hold any permit to deal with any kind of intoxicant under the provisions of the A.P. Excise Act, 1968 (for short 'the Act') in the district of Ranga Reddy. The detenu, illegally and without authorization, it is stated, has been indulging in clandestine transportation of illicit liquor which is unfit for human consumption, harmful to the health. The consumption of and supply of the illicit liquor is with an intention of earning money at the cost of public health. The sale of liquor manufactured is illegal in Ranga Reddy

District and other places of State of Telangana and is in contravention of the Act. The various acts of omission and commission by the petitioner attract the definition under section 2 [b] of Act 1 of 1986. Therefore, with a view to preventing the detenu from indulging in these illegal acts of transportation of illicitly manufactured liquor, by recording subjective satisfaction, the order of detention is passed and order reads thus :

Whereas, with a view to prevent Sri Arif s/o Abdul Rehman, aged about 38 years r/o Ward No.11 Takiya Mohalla Balsamud (v), Kasaravath [Tehsil], Kargoon district, Madhya Pradesh from acting in any manner prejudicial to the maintenance of the public order and health, I am satisfied that the provisions of the Telangana Prevention of Dangerous Activities, Bottleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 [Act No.1/86] should be invoked to detain you Sri Arif s/o Abdul Rehman, aged about 38 years, R/o Ward No.11 Takiya Mohalla Balsamud [v], Kasaravath [Tehsil] Kargoon district, Madhya Pradesh.

Now, therefore, in exercise of powers conferred on me under section 3 [1] read with 2 [a] and [b] of Telangana Prevention of Dangerous Activities, Bottleggers, Drug Offenders, Goondas, Immoral traffic Offenders and Land Grabbers Act, 1986 [Act No.1/1986] , read with GO.Rt.No.775 of General Administration [Law & Order]Department dated 10/03/2015, I do hereby order that Sri Arif s/o Abdul Rehman, aged about 38 years R/o. Ward No.11 Takiya Mohalla, Balsamud [v], Kasaravath [Tehsil] Kargoon District, Madhya Pradesh be detained from the date of service of this order on him and be lodged at Central Prison, Cherlapally.

Whereas, it has been brought to my notice that the said Sri Arif s/o Abdul Rehman, aged about 38 years R/o. Ward No.11 Takiya Mohalla, Balsamud [v], Kasaravath [Tehsil] Kargoon District, Madhya Pradesh was arrested on 09/02/2015 by the officials of Excise Station Rajendranagar and remanded to judicial custody and he is still in judicial custody in Central

Prison, Cherlapally in Crime No.388/2014-15 of Prohibition and Excise Station, Chevella, Ranga Reddy district and Crime No.1481/2014-15 of Prohibition and Excise Station Rajendranagar, Ranga Reddy district. I believe that there is a genuine possibility of his release on bail and further on being released he would further indulge in the activities which are prejudicial to the public order.

The Superintendent of Jails, Cherlapally is directed to serve the orders of detention on Arif s/o Abdul Rehman and return the served copy to the Prohibition and Excise Superintendent, Rajendranagar, Ranga Reddy district for onward transmission to Government of Telangana.

You have also hereby informed that you have a right to make representation against your detention to the detaining authority, the Advisory Board and also the Government of Telangana. You have also right to be heard personally or through a friend who is not an Advocate, by the Advisory Board, if you so desire.”

4. The second respondent referred to Crime No. 704/2014-15 dated 17/01/2015 registered at Excise Station, Zaheerabad, Medak district, wherein the detenu is shown as Accused No.19. The allegations constituting criminal offence in Crime No.704/2014-15 are that on 16/01/2015 and 17/01/2015 in the raid/routine searches conducted at several places in Kohir, Kondapur, Sadashivapet and Sanga Reddy of Medak district, huge quantity of 445 cases Officers Choice Whisky, 180 ML bottles (non duty paid liquors) along with (26) 180 ML liquor bottles were seized. The samples of seized liquor were sent to the chemical analysis and report CE.No.131/2015-3 to 131/2015-14 dated 07/02/2015 stated that the samples contain alcohol and the strength is not within the prescribed limits. The samples contain fine particles. The detaining authority refers to Crime No. 388/2014-15 dated 17/01/2015 of Excise Station Chevella, Ranga

Reddy district. The detenu is shown as A-2 in the instant crime. The detaining authority refers to Crime No. 14871/2014-15 dated 09/02/2015 of Excise Station Rajendranagar, wherein the confessional statement of detenu was recorded. Further in ground No.3, the detaining authority refers to Crime No.1481/2014-15 dated 09/02/2015 of Excise Station Rajendranagar, Ranga Reddy district. The chemical analysis of the samples collected in these crimes is stated to be unfit for human consumption. With a view to preventing the detenu from indulging in transportation of illicitly manufactured liquor or duplicate liquor, which is unfit for human consumption and affects human health, the order of detention dated 26/3/2015 has been passed. Hence, the writ petition.

5. The 2nd respondent filed counter-affidavit firstly reiterated what is referred in the detention order and secondly on the objections raised against detention order replied thus.

6. Sri Amarnath Goud, learned counsel for the petitioner, contends that assuming without admitting that the detenu is one of the accused in the crimes referred to in the grounds of detention, still these offences, if proved, are matters which can be considered and decided under the Act and recourse to Act 1 of 1986 is impermissible and the facts and circumstances of the case do not attract jurisdiction conferred by Act 1 of 1986. According to the learned counsel, the imposition of detention for 12 months from the date of passing the detention order is illegal and contrary to the principles laid down by the Apex Court in **CHERUKURI MANI V/s. CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH AND ORS** ^[1]. **MUNAGALA YADAMMA V/s. STATE OF ANDHRA PRADESH AND ORS** ^[2]. He further relies upon the decisions in **SHEELA BAI V/s. STATE OF ANDHRA**

**PRADESH AND ANR ^[3]. BHOLA KUNDU V/s. PRL. SECRETARY
TO GOVT. FOREST DEPARTMENT, GOVT. OF ANDHRA
PRADESH AND ORS ^[4]. M. LAXMI BAI V/s. COMMISSIONER OF
POLICE, HYDERABAD AND ORS ^[5]. N. KAMALA V/s.
COLLECTOR AND DISTRICT MAGISTRATE, KARIMNAGAR AND
ORS ^[6].**

6. On facts, it is contended that the detaining authority did not deliver material to detenu, much less explained to the detenu in the language known to him. Therefore, he prays for setting aside the order of detention.

7. On the contrary, learned Government Pleader draws attention of the court to a series of crimes in which the detenu is shown as one of the accused and his confessional statement of illicit transport of spurious liquor in Crime No. 1481/2014-15. He contends that the second respondent, with a view to preventing the detenu from illegal transportation of spurious/illicitly manufactured liquor in the State of Telangana and on being satisfied that the transportation is rampant in a few districts which is affecting public health, has passed the order of detention. He submits that there is enough material to record subjective satisfaction and this court while examining the subjective satisfaction recorded by the detaining authority does not sit as a court of appeal and consider each one of the circumstances as the court of appeal would have done. As regards, non-communication of material and particularly in the language known to the detenu, the Government Pleader relies upon the categorical stand of the detaining authority in para No.11 of the counter-affidavit, which reads thus :

11. "It is submitted that all the mandatory procedures/provisions of the Telangana Prevention of Dangerous Activities of Bottleggers, Dacoits, Drug

Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 [Act 1 of 1986] have been strictly followed, also the detention orders, grounds of detention and other relevant material was served upon the detenu on 26-03-2015 explaining in Hindi about the same before the Superintendent, Central Prison, Cherlapally by duly obtaining signature of the detenu on all the material papers. Further the detenu was given an opportunity for representation before the detaining authority, advisory board or the Government but no representation made till date therefore, the allegations and grounds made in the writ petition are incorrect and without any legal basis, hence denied. In view of the above reasons, the action of the respondents in passing the impugned orders is in accordance with law. The contentions contra are untrue and hereby denied. The allegations contra are untenable. There are no grounds warranting the interference of this Hon'ble court under Article 226 of the Constitution of India. The writ petition is liable to be dismissed."

8. The learned Government Pleader contends that the decision reported in CHERKURI MANI's case was considered by this court in WP.No.40066 of 2014 and WP.No. 5168 of 2015 along with the principles of law laid down by the Apex Court in **HARPREET KAUR [MRS] HARVINDER SINGH BEDI V/s. STATE OF MAHARASHTRA AND ANR** ^[7], **T. DEVAKI V/s. GOVERNMENT OF TAMIL NADU AND ORS** ^[8] and the power of detaining authority to pass the detention order beyond three months was considered and by following HARPREETH KAUR's case and T. DEVAKI's case the detention passed on CHERUKURI MANI was rejected. According to learned Government Pleader, earlier the three Judge Bench which was in T. Devaki's case and Harpreeth Kaur's case have not been brought to the notice of the Apex Court in Cherukuri Mani's case. Therefore, he contends that there is no illegality in the order of detention and prays for

dismissing the writ petition.

9. We have heard the learned counsel for parties and perused the material available on record. The contention of learned counsel for the petitioner is that the order of detention for twelve months at a time is liable to be set aside, having regard to the ratio laid down by the Apex Court in **Cherukuri Mani's** case. On the other hand, learned Government Pleader places reliance upon **Harpreet Kaur (MRS) Harvinder Singh Bedi's** case and **T.Devaki's** case together with two unreported decisions of this Court where similar point was considered and held against the detenu.

10. We have perused the principles laid down in **Harpreet Kaur (MRS) Harvinder Singh Bedi's** case and **T.Devaki's** case and also the view taken by this Court in W.P.No.40066 of 2014 and W.P.No.5168 of 2015. In our considered view, the first contention raised by the petitioner is without merit and is accordingly, rejected.

11. Learned counsel for the petitioner further contends that even assuming that the detenu is shown as one of the accused in various crimes registered under the Act, the remedy of prosecution under the Act is available and the harsh option of preventive detention is incorrect and the subjective satisfaction recorded by the detaining authority is erroneous and liable to be interdicted and set aside.

12. On the other hand, learned Government Pleader draws our attention to the involvement of detenu in a series and serious crimes under the Act and also his confessional statement in one of the crimes. He contends that there is material to appreciate and arrive at subjective satisfaction for preventing the detenu from indulging in the same offences. According to him, once the

detaining authority, applying his mind to the material available on record, records a subjective satisfactory finding, this Court will not sit as a Court of appeal and examine whether the subjective satisfaction recorded by the detaining authority is correct or not. We are conscious of the scope of judicial review in a writ of Habeas Corpus, particularly an order of detention passed under Act 1 of 1986. The detenu is shown as accused in as many as six crimes and in one of the crimes, he has also given a confessional statement of his involvement in these excise offences and rampant illicit transportation of liquor in few Districts in the State of Telangana. Firstly, we are not inclined to re-appreciate the reasons recorded by the detaining authority and secondly, no exception need be taken to the findings already recorded by the detaining authority, having regard to the material on which satisfaction is recorded. We reject the second contention as well.

13. The last submission of the learned counsel for the petitioner is that the grounds and material on which the detaining authority had relied upon have not been served on the detenu in the language known to him. The learned Government Pleader draws our attention to the material on record, which belies this contention. We are satisfied that the detaining authority has supplied the material relied upon by him to the detenu in the language known to the detenu. Though a ground is raised, we are satisfied the same is not brought home to find fault with the order of detention. No other contention is canvassed by the counsel appearing for the petitioner.

14. The writ petition fails and is accordingly dismissed. No costs.

15. As a sequel, miscellaneous petitions, if any shall stand closed.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

28/10/2015
Is L / k d L.

HONOURABLE THE ACTING CHIEF JUSTICE
DILIP B. BHOSALE
AND
HONOURABLE SRI JUSTICE S.V. BHATT

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[Per the Hon’ble Sri Justice S.V. Bhatt]

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- [\[1\]](#)) 2014 Law Suit [SC] Page-395
 - [\[2\]](#)) [2012]2 SUPREME COURT CASES-386
 - [\[3\]](#)) 2014 (1) ALD (Crl.) 1005 [AP]
 - [\[4\]](#)) 2014 (1) ALD (Crl.) 1009 [AP]
 - [\[5\]](#)) 2003 (1) ald [Crl.] 181 [DB] [AP]
 - [\[6\]](#)) 2008 [5] ALT 596 [DB]
 - [\[7\]](#)) [1992] 2 SUPREME COURT CASES 177
 - [\[8\]](#)) (1990) 2 SUPREME COURT CASES-456