

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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WRIT PETITION No.9940 OF 2016

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ORDER
(per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the detention of the petitioner's husband, Putta Ramulu, under order dated 20.11.2015 passed by the Collector and District Magistrate, Nalgonda District, under Section 3(1)&(2) read with Section 2(a) & (b) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act of 1986'), which was thereafter confirmed by the Government of Telangana under G.O.Rt.No.360, General Administration (Law & Order) Department, dated 15.02.2016, extending the period of detention to twelve months from the date of detention, 20.11.2015.

Though various contentious issues are sought to be raised by Sri K. Rajasekhar, learned counsel for the petitioner, in support of his attack against the detention of the petitioner's husband, we find that the matter is amenable to resolution on a single technical ground obviating the necessity for this Court to undertake a detailed examination of all the other issues raised on merits.

It is a settled position of law that preventive detention under Article 22 of the Constitution falls within the realm of the subjective satisfaction of the detaining authority and this Court would not sit in appeal over the same. However, while arriving at such subjective satisfaction, it is incumbent upon the detaining authority to apply its mind independently and thereafter come to a conclusion as to whether the detention of the person concerned is warranted for protecting public order. The detaining authority can neither delegate such an essential function nor can it blindly accept any recommendation made by the sponsoring authority in this regard.

Perusal of the order of detention and the grounds of detention in the present case reflects that there is no reference whatsoever to any bail having

been granted to the detenu in connection with the three cases cited against him. However, in the counter filed in support of the detention order passed by him, the Collector and District Magistrate, Nalgonda, stated in para 9 as follows:

“In reply to para 8, 9 and 10 of the affidavit, it is submitted that in Cr.No.41/2015-16 and Cr.No.100/2015-16, the detenu was arrested on 1-5-2015 and 5-8-2015 respectively after issuing notice u/s 41(a) of Cr.P.C. and on his furnishing sureties he was released. In Cr.No.317/2015-16, the detenu was arrested on 23-9-2015 and was remanded to judicial custody and subsequently he was released on bail. The detaining authority having considered the entire material including the bail petition and bail order and having satisfied that the cases registered against the detenu under the ordinary law have no deterrent effect in curbing his illegal bootlegging activities, he continued the same after coming out on bail one after the other. Being the detaining authority having considered the ill effects of the I.D. liquor on the general public health and having felt that he is not amenable to ordinary law passed the impugned detention order with a view to prevent him from further indulging in such offences, in the larger public interest.” *(emphasis is ours)*

As Sri K. Rajasekhar, learned counsel, vehemently contended that no such bail orders or bail petitions were placed before the detaining authority as claimed by him in the afore-stated para of the counter-affidavit, the learned Government Pleader for Home was asked to produce the original file relating to the detaining authority to verify this aspect.

Today, the learned Government Pleader for Home placed the said file before us and already having gone through the same, fairly conceded that neither any bail petitions nor bail orders were available in the said file. This fact is sufficient to indicate that there was no actual application of mind by the detaining authority, who then added insult to injury by filing a false affidavit before this Court stating on oath that he had considered the entire material, including the bail petition and bail order, and had satisfied himself that the case registered against the detenu under the ordinary law had no deterrent effect upon him.

We must place on record our distress that an Officer of the State of no

less a rank than the Collector of a District has stooped to the level of filing a false affidavit before this Court.

Apart from the fact that, in the capacity of a detaining authority, the Collector and District Magistrate, Nalgonda, was required by constitutional mandate to ensure that he arrived at a fully informed and independent subjective satisfaction before exercising power under the Act of 1986, as a Senior Officer of the State he is also expected to be aware of the seriousness and responsibility weighing upon him when filing a counter-affidavit before this Court. The Collector and District Magistrate, Nalgonda, has failed on both counts.

On this short ground, the order of detention dated 20.11.2015 passed against the petitioner's husband, Putta Ramulu, which was thereafter confirmed and extended for a period of twelve months under G.O.Rt.No.360, General Administration (Law & Order), dated 15.02.2016 is set aside.

The writ petition is allowed. The petitioner's husband shall be set at liberty forthwith unless his confinement is required in relation to any other case.

Office is directed to mark a copy of this order to the Chief Secretary, Government of Telangana, for information and to sensitize officials of the State of their responsibility and the standard of truth to be maintained while filing sworn affidavits before the Courts.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

24th AUGUST, 2016

PGS