

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

-
W.P.No.42626 of 2015

Between:

Smt. I.Dhanalaxmi

.... Petitioner

Vs.

1) The State of Telangana rep. by its Chief Secretary to Government,
General Administration (L&O) Dept, Telangana Secretariat, Hyderabad &
Ors.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 31.03.2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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

JUSTICE RAMESH RANGANATHAN

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION No.42626 of 2015

% Dated 31-03-2016

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Between:

Smt.I.Dhanalaxmi

.... Petitioner

Vs.

\$ 1) The State of Telangana rep. by its Chief Secretary to Government,
General Administration (L&O) Dept, Telangana Secretariat, Hyderabad &
Ors.

.... Respondents

! Counsel for the petitioner: Sri Kowturi Vinaya Kumar

^ Counsel for respondents : The Advocate-General (TG)
Government Pleader for Home (TG)

<GIST:

> HEAD NOTE:

? Citations:

1. (2011) 5 SCC 244: (2011) 2 SCC (Cri) 596
2. 2012 (11) SCALE 409
3. (1981) 2 SCC 427 = AIR 1981 SC 728
4. (1980) 4 SCC 531
5. (1990) 2 SCC 1
6. (1975) 2 SCC 81
7. 2016(1) ALT 738 (D.B)
8. (1981) 1 SCC 419
9. (1980) 4 SCC 544
10. (1982) 3 SCC 216
11. (1980) 2 SCC 270
12. AIR 1981 SC 746
13. (1980) 4 SCC 525
14. (1980) 4 SCC 499
15. (1981) 2 SCC 436
16. (1981) Supp SCC 53(1)
17. AIR 1991 SC 336 = 1991 Supp (2) SCC 274
18. (1981) 2 SCC 709
19. (2006) 3 SCC 321
20. (1992) 1 SCC 1
21. (2006) 7 SCC 337
22. (1991) 1 SCC 128
23. (1975) 3 SCC 328
24. AIR 1972 SC 1749
25. (1973) 1 SCC 297
26. 1994 (3) ALT 467 (DB)
27. (2005) 2 ALT 244
28. (2012) 2 SCC 386
29. (2012) 2 SCC 389
30. (2012) 2 SCC 176
31. (1975) 3 SCC 722
32. 1954 SCR 418
33. AIR 1966 SC 740
34. (1969) 1 SCC 10
35. (1974) 4 SCC 573
36. (1979) 4 SCC 370

37. 1943 FCR 49
38. AIR 1951 SC 174
39. (1974) 3 SCC 600
40. ILR 1972 AP 1025

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

-
WRIT PETITION NO.42626 of 2015
-

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

A Writ of Habeas Corpus is sought by the wife of Sri Inapanuri Ramesh seeking his release from Central Prison, Warangal after declaring his detention, by order of the 2nd respondent dated 28.09.2015 and confirmed by G.O.Rt. No.3363 dated 18.12.2015, as illegal and unconstitutional.

It is the petitioner's case that they were eking out their livelihood carrying on agricultural activities on a small piece of land which they had taken on lease in September, 2015; her husband-Sri Inapanuri Ramesh was taken away by the 5th respondent and other excise constables without prior intimation to her; a preventive detention order dated 28.09.2015 was issued by the 2nd respondent under Section 3(1) & (2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 ('Act 1 of 1986' for short); he was lodged in Central Prison, Warangal; subsequently, vide G.O.Rt. No.2711 General Administration (Law and Order) Department dated 07.10.2015, the Government had accorded approval to the order of detention passed by the 2nd respondent; the detenu was informed, by memo dated 06.11.2015, that a meeting of the Advisory Board would be held on 12.11.2015; she, along with the elder brother of the detenu, attended the meeting of the Advisory Board; in its report dated 13.11.2015, the Advisory Board opined that there was sufficient cause for the detention of her husband; taking the said report into consideration, the Government had confirmed the order of detention, and had directed that the detenu be continued in detention for a period of 12 months from the date of detention i.e., 30.09.2015 vide G.O.Rt. No.3363 dated 18.12.2015; and the detention is

arbitrary and illegal.

The petitioner further submits that, in the grounds of detention passed by the 2nd respondent, it is stated that her husband was dealing with illicitly distilled liquor, and was indulging in the possession, transport, sale/distribution of I.D. liquor in contravention of the A.P. Prohibition Act; five cases had been registered against him in this regard; reference was also made therein to the reports of the Government Chemical Examiner to allege that the activities of the detenu were posing danger to public health, and thereby disturbing public order warranting preventive detention; in none of the five charge sheets has the detenu been accused of manufacture/production of I.D. liquor; this is also reiterated in the preamble of the order of detention; however, in the grounds of detention, it is stated that there were five cases against the detenu for the manufacture, possess etc. of I.D. liquor; in none of the cases is there any allegation by the prosecution that the detenu was involved in the manufacture of I.D. liquor; reliance placed by the detaining authority, on a non-existent allegation of manufacture of I.D. liquor, reflects total non-application of mind; it was unnecessary for the detaining authority to keep the detenu in preventive custody, as the ordinary laws in force would have sufficed to act as a deterrent; though the orders granting bail, to the detenu in all the five cases, were referred to and relied upon in the grounds of detention, copies thereof were not furnished to the detenu along with the grounds of detention; non-furnishing of copies of the bail orders, and the connected documents, is fatal; the detenu, who is lodged in Central Prison, Warangal, has no access to his own documents; and he has, therefore, been deprived of his right to make an effective representation against his detention.

In the order of detention dated 28.09.2015, the detaining authority has recorded that information was laid before him that the detenu was repeatedly indulging in possession, transport, sale/distribution of illicitly distilled liquor in contravention of Section 7-A read with Section 8 of the A.P. Prohibition (Amendment) Act, 1997; he was also abetting commission of these illegal activities; the activities of boot-legging were directly causing, and were calculated to cause, widespread danger to public health and tranquillity in a

locality viz, Muddunuru village of Thallada Mandal area, as is evident from the records placed before him in five criminal cases; and the activities of boot-legging were thus affecting, and were also likely to affect adversely, the maintenance of public order in the area viz, Muddunuru village of Thallada Mandal.

The detaining authority, thereafter, recorded his satisfaction that recourse to normal legal procedure would involve more time, it would not be an effective deterrent in preventing the detenu from indulging in further prejudicial activities, all the activities of the detenu were likely to cause danger to public health, and were prejudicial to the maintenance of public order; and, thus, with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order detaining him by invoking the provisions of Act 1 of 1986.

In reply to ground (h) of the affidavit, filed in support of the writ petition, the 2nd respondent, in his counter-affidavit, denies the allegation that failure to furnish the bail orders, referred to and relied upon in the grounds of detention, was fatal or that he was deprived of an opportunity of making an effective representation. The 2nd respondent states that, in the grounds of detention, it was mentioned that the detenu was enlarged on bail in all the cases referred to therein; no prejudice was thus caused to the detenu; neither the detenu nor the petitioner had made any request either to the detaining authority or to the Government or to the Advisory Board for furnishing the bail orders; this contention was only an after-thought and lacked bonafides; and, hence, the allegations were incorrect and untenable.

While referring to the five criminal cases in the grounds of detention, the detaining authority has noted separately, with respect to each of the five criminal cases, that the detenu had been enlarged on bail, and the cases were under trial before the Court. While the detaining authority has no doubt referred to the orders of bail in the grounds of detention, the specific allegation, in the affidavit filed in support of the writ petition, of non-supply of copies of bail orders to the detenu has not been denied in the counter-affidavit, nor is it stated therein that the bail orders were placed, before the

detaining authority, by the sponsoring authority. It is also not in dispute, and has been fairly admitted by the Learned Government Pleader for Home, that copies of the bail orders were not furnished to the detenu after he was detained in preventive custody.

Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. Since Article 22(3)(b) of the Constitution of India permits preventive detention, the power of preventive detention must be confined within very narrow limits, otherwise it would take away the right to liberty guaranteed by Article 21 of the Constitution of India. It follows, therefore, that 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 be illegal. (**Rekha v. State of T.N.**,^[1]; **K. Nageswara Naidu v. Collector and District Magistrate, Kadapa**^[2]). One of the Constitutional imperatives, embodied in Article 22(5) of the Constitution, is that the authority making the order of detention must, as soon as may be, communicate to the detenu the grounds on which the order of detention has been made; and all the documents and materials relied upon by the detaining authority, in passing the order of detention, must be supplied to the detenu as soon as practicable. (**Lallubhai Jogibhai Patel v. Union of India**^[3]; **Ichchu Devi Choraria v. Union of India**^[4]). All the basic facts and particulars, which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the detention order, must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. (**M. Ahamedkutty v. Union of India**^[5]; **Khudiram Das v. State of W.B.**^[6]).

Documents, statements or other material, relied upon in the grounds of detention, must be communicated to the detenu, because they form part of the grounds, and the grounds furnished to the detenu cannot be said to be complete without them. It would not be sufficient, therefore, to communicate to the detenu a bare recital of the grounds of detention. (**Lallubhai Jogibhai Patel**³; **Ichchu Devi Choraria**⁴; **Vasanthu Sumalatha v. State of Andhra**

Pradesh rep., by its Chief Secretary, Hyderabad^[7]). If the documents, which formed the basis of the order of detention, are not served on the detenu along with the grounds of detention, there would be no service of the grounds of detention in the eye of law; and that circumstance would vitiate the detention, and would make it void ab initio. (**M. Ahamedkutty**⁵; **S. Gurdip Singh v. Union of India**^[8]; **Ichhu Devi Choraria**⁴; **Shalini Soni v. Union of India**^[9] and **Vasanthu Sumalatha**⁷). The documents relied on, and referred to, in the order of detention, should be furnished at the earliest so that the detenu can make an effective representation immediately, instead of waiting for the documents to be supplied later. The question of demanding the documents is wholly irrelevant. (**M. Ahamedkutty**⁵; **Mohd. Zakir v. Delhi Administration**^[10]; **Vasanthu Sumalatha**⁷).

If there is failure, or even delay, in furnishing those documents it would amount to denial of the right to make an effective representation. (**M. Ahamedkutty**⁵; **Ramachandra A. Kamat v. Union of India**^[11]; **Francies Coralie Mullin v. UT of Delhi**^[12]; **Ichhu Devi Choraria**⁴; **Pritam Nath Hoon v. Union of India**^[13]; **Tushar Thakker v. Union of India**^[14]; **Lallubhai Jogibhai Patel**³; **Kirit Kumar Chaman Lal Kundaliya v. Union of India**^[15]; and **Ana Carolina D'Souza v. Union of India**^[16]). The material and documents, which influence the mind of the detaining authority in passing the order of detention, are part of the basic facts and material and should be supplied to the detenu. (**Lallubhai Jogibhai Patel**³; **Ichhu Devi Choraria**⁴).

If the documents, relating to the grant of bail, had been given to the detenu, he could have made an effective representation explaining the circumstances relevant to the grant of bail. The denial of an effective opportunity, by not giving the detenu the relevant documents while he is in custody, would result in failure of justice. (**P.U. Abdul Rahiman v. Union of India**^[17]; **M. Ahamedkutty**⁵). It is immaterial whether the detenu already

knew about the contents of the documents or not. Non-furnishing of the copy of the document is fatal as the detenu, who is in jail, would have no access to his own documents. (**M. Ahamedkutty**⁵; **Mehrunisa v. State of Maharashtra**^[18]). It is hardly an answer to the submission made on behalf of the detenu, that copies of material documents referred to in the grounds of detention were not supplied to him and he was thus prevented from making an effective representation, to contend that copies of the documents were not supplied as the detenu was already aware of the contents of the documents. The detenu is entitled to be supplied with copies of all the material documents, instead of having to rely upon his memory in regard to the contents of the documents. Failure of the detaining authority to supply copies of such documents vitiates the detention, and the detenu is entitled to be released (**Mehrunisa**¹⁸; **Ichchu Devi Choraria**⁴; **Shalini Soni**⁹) as it amounts to denial of the detenu's right to make an effective representation, and would be in violation of Article 22(5) of the Constitution of India. It would render the continued detention of the detenu illegal and entitle him to be set at liberty. (**M. Ahamedkutty**⁵).

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To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention. (**Vasanthu Sumalatha**⁷).

In **Sunila Jain v. Union of India**^[19] the Supreme Court held that whether, on the date of the passing of the order of detention, the detenu was free and, if he is, whether he is subjected to certain conditions pursuant to, and in furtherance of, the order of bail is a relevant fact; if pursuant to, or in furtherance of such conditions, he may not be able to flee from justice, that may also be a relevant consideration for the purpose of passing an order of detention but the converse is not true; some such other grounds raised in the application for bail, and forming the basis of passing an order of bail, may

also be held to be relevant; it would, however, not be correct to contend that, irrespective of the nature of the application for bail, or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority, and copies thereof supplied to the detenu; there is no rule of universal application that, irrespective of the facts and circumstances of the case, it is imperative to place all applications for bail, as also the orders passed thereupon, before the detaining authority, and copies thereof supplied to the detenu; if a person had been released on bail on the ground that the offence is bailable, it would not be necessary to bring the said fact before the detaining authority; the detaining authority will have to satisfy himself, on the basis of the material placed on record, as to whether an order of preventive detention should be passed against the detenu or not; and the constitutional mandate can be said to be violated, provided: (1) impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (2) if relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority.

Unlike in **Sunila Jain**¹⁹ where a copy of the bail application, for an offence which was bailable, was not furnished, and a copy of the order granting bail and the order of the remand were furnished to the detenu, in the present case the orders granting bail neither appear to have been considered by the detaining authority nor were copies thereof furnished to the detenu. The First Schedule to the Criminal Procedure Code, 1973 relates to classification of offences and thereunder offences, among others, are also classified as bailable or non-bailable. Part-I of the First Schedule relates to offences under the Indian Penal Code, and Part-II to offences under other laws. Category – 1 in Part - II relates to offences punishable with death, imprisonment for life, or imprisonment for more than 7 years, and these offences are classified as non-bailable. Similarly offences punishable with imprisonment for three years and upwards, but not more than 7 years, are also classified, in category – II in Part II, as non-bailable. It is only offences, punishable with imprisonment for less than three years or with fine only, which under category – III of Part II, are classified as bailable offences.

In the present case, the detenu was charged of having committed offences under Section 7-A read with Section 8(e) of the Andhra Pradesh Prohibition Act, 1995. Section 2(1) of the Andhra Pradesh Prohibition Act, 1995, defines 'arrack' to mean country liquor including arrack brewed, coloured, flavoured or spiced. Section 2(7) defines 'liquor' to include (a) spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer, toddy and every liquid consisting of or containing alcohol; and (b) any other intoxicating substance which the Government may, by notification, declare to be liquor for the purposes of the Act. Section 7-A prohibits the production, manufacture, storage, possession, collection, purchase, sale and transport of arrack. Section 8(e) stipulates that whoever contravenes the provisions of Section 7-A shall, on conviction, be punished with imprisonment for a term which shall not be less than one year, but which may extend upto five years and with fine which shall not be less than ten thousand rupees but which may extend upto one lakh rupees. Section 11-A of the Act relates to grant of bail and thereunder, notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court shall grant any bail, to any person accused of an offence under sub-clause (e) of Section 8, unless the prosecuting officer is given an opportunity to oppose the application, and the court shall record reasons while granting the bail. As the punishment prescribed, for contravention of Section 7-A of the A.P. Prohibition Act, is upto five years, and is more than the three years stipulated in category – II of Part II, the said offence, in terms of category II of Part-II of the First Schedule to the Cr.P.C, is a non-bailable offence. Reliance placed by the Learned Government Pleader for Home on **Sunila Jain**¹⁹ is, therefore, misplaced. (**Vasanthu Sumalatha**⁷).

In **Abdul Sathar Ibrahim Manik v. Union of India**^[20], the Supreme Court held that **M. Ahamedkutty**⁵ was a case where the detenu was released on bail, and was not in custody; this was a vital circumstance which the authority had to consider, and rely upon, before passing the detention order; if there was a possibility of the detenu being released, and on being so released he is likely to indulge in prejudicial activity, then that would be one such compelling necessity to pass the detention order; the

order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and if bail is granted, notwithstanding such opposition, the same can be questioned before a higher court; if the detenu has moved for bail then the application and the order thereon refusing bail, even if not placed before the detaining authority, does not amount to suppression of relevant material; the question of non-application of mind, and satisfaction being impaired, does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody; non-supply of copies of the bail application, or the order refusing bail to the detenu, cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same; When the detaining authority has merely referred to them in the narration of events, and has not relied upon them, failure to supply the bail application, and order refusing bail, will not cause any prejudice to the detenu in making an effective representation; it is only when the detaining authority has not only referred to, but has also relied upon them in arriving at the necessary satisfaction, then failure to supply these documents may, in certain cases depending upon the facts and circumstances, amount to violation of Article 22(5) of the Constitution of India; whether, in a given case, the detaining authority has casually or passingly referred to these documents, or has also relied upon them, depends upon the facts and the grounds, which aspect can be examined by the Court; in a case where the detenu is released on bail, and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention; and in such a case the bail application, and the order granting bail, should necessarily be placed before the authority, and copies thereof should also be supplied to the detenu.

In **Vinod K. Chawla v. Union of India**^[21], the Supreme Court held that the law does not require that every document or material, in the possession of the sponsoring authority, must necessarily be placed before the detaining authority and in every case, where any such document or material is not so placed, the formation of opinion and the subjective

satisfaction of the detaining authority would get vitiated; placing the application for bail, and the order made thereon, are not always mandatory and such requirement would depend upon the facts of each case; if the detenu has moved for bail then the application and the order thereon refusing bail, even if not placed before the detaining authority, does not amount to suppression of relevant material; and the question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

Both in **Abdul Sattar Abraham Manik**²⁰, and in **Vinod K. Chawla**²¹, the Supreme Court held that in cases where an order granting bail is casually referred to and is not relied upon, and in cases where the bail application is moved by a detenu in custody, failure to place copies of the bail order before the detaining authority is not fatal. The Supreme Court, in **Abdul Sattar Abraham Manik**²⁰, made it clear that in cases where the detenu is released on bail, and is at liberty when the order of detention is passed, it is necessary that the bail application, and the order granting bail is placed before him, and copies thereof should be supplied to the detenu. In the present case, the detenu was released on bail, and was at liberty when the order of detention was passed. Failure to place copies of the orders granting bail, before the detaining authority when he passed the order of detention, is fatal. Reliance placed by the Learned Government Pleader for Home, on **Abdul Sattar Abraham Manik**²⁰ and **Vinod K. Chawla**²¹ is, therefore, misplaced.

In **Kamarunnissa v. Union of India**^[22], the detaining authority had averred, in the grounds of detention, that, though the detenu was in judicial custody, he could be released on bail any time as the offence with which he had been charged was bailable in which case he may indulge in similar prejudicial activities. The Supreme Court held that, it was necessary to bear in mind the context in which the expression 'bailable' was used; the Joint Secretary had loosely described the offence as bailable in his counter, and did not use that word in the technical sense of Section 2(a) of the Code of

Criminal Procedure; the High Court was of the opinion that use of the expression 'bailable' could not lead to the conclusion that there was no application of mind; and having regard to the background in which this expression was used in the grounds of detention, and bearing in mind the explanation and the fact that in such cases Courts normally grant bail, it could not be said that use of the expression "bailable" disclosed non-application of mind. The judgment in **Kamarunnisa**²² has no application to the facts of the present case. In the present case there is no inadvertence in the order of detention regarding grant of bail. While the grounds of detention refer to the orders granting bail, the complaint is of failure to supply copies of the bail orders to the detenu, who is in preventive custody, to enable him to make an effective representation.

The contention, that the detenu did not specifically ask for copies of bail orders, is also of no consequence as the detenu has a right to make an effective representation against his detention. In order enable him to exercise his right of representation against such detention, it was incumbent on the part of the detaining authority to make available not just the order and the grounds of detention, but all other documents on which reliance has been placed by the detaining authority. As it is evident that the orders granting bail were relied upon by the detaining authority, failure on his part to furnish copies of the bail orders to the detenu, has vitiated the order of detention.

In reply to ground (a) of the affidavit, filed in support of the Writ Petition, the 2nd respondent, in his counter-affidavit, denied the contention that he had relied upon non-existent allegations of manufacture or that it reflected total non-application of mind. The 2nd respondent further states that the detenu was involved in five criminal cases for clandestine boot-legging activities in contravention of Sections 7-A and 8(e) of the A.P. Prohibition Act; a person who manufactures, stores, transports, imports, exports or sells or distributes any liquor, intoxicating drug or other intoxicant, in contravention of any of the provisions of the A.P. Excise Act, 1968, falls within the definition of a boot-legger under Section 2(b) of Act 1 of 1986; in all the five criminal cases, the detenu was caught red-handed while in

possession of illicitly distilled liquor for the purpose of sale in contravention of the provisions of the Excise Laws; and, hence, the allegations were incorrect.

In the history and introduction part of the grounds of detention, the detaining authority has recorded that there were five cases of manufacture, possession, sale and transportation of illicitly distilled liquor registered against the detenu within a span of less than one year i.e., from September, 2014 to September, 2015. After referring to all the five criminal cases, the chemical examiner's reports, and after taking note of the ill-effects of illicitly distilled liquor, the detaining authority has recorded that, after careful consideration of the material placed before him, he was satisfied that the detenu was again likely to indulge in illegal manufacture, storage, sale, possession and transportation of illicitly distilled liquor.

While the order of detention is no doubt silent in this regard, the grounds of detention, in a few places, refer to the detenu having indulged, among others, in the manufacture of illicitly distilled liquor. Learned Government Pleader for Home would, however, submit that this inadvertent error in the English translation is not to be found in the Telugu version of the grounds of detention; "Telugu" is the official language of the State, and this inadvertent error in the English translation would not justify the order of detention being set aside on this ground.

In **Binod Bihari Mahato v. State of Bihar**^[23] the validity of the detention order was challenged on the ground that the English version of the grounds of detention recited that the District Magistrate was satisfied that, if the petitioner was allowed to remain at large, he would indulge in activities prejudicial to the maintenance of Public Order or Security of the State; and this recital showed that the District Magistrate did not apply his mind, with any seriousness, either to the acts alleged in the grounds of detention against the petitioner, or to the question whether they fell within the purview of the expression "***maintenance of public order***" or "***security of the State***" or both. It is in this context that the Supreme Court held that there could be no doubt, in view of the decisions in **Kishori Mohan Bera v. State of**

W.B. ^[24] and **Akshoy Konai v. State of W.B.** ^[25], that, if the order of detention purports to be based on the satisfaction of the detaining authority that it is necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order, it would clearly be an invalid order; there was no reference to the “Security of the State” in the recital of the satisfaction contained in the order of detention; the District Magistrate was satisfied that it was necessary to detain the petitioner only on the ground that his activities were prejudicial to the maintenance of public order, and it was on the basis of this satisfaction that he made the order of detention; the Hindi version of the grounds of detention, which also reiterated the satisfaction of the District Magistrate based on the same ground, did not make any reference to danger to the Security of the State by reason of the activities of the petitioner; it is only in the English version of the grounds of detention that the words “Security of the State” were added in the recital of the satisfaction of the District Magistrate; this was obviously the result of inadvertence, and no argument could be founded upon it; in the first place, Hindi being the official language of the State, it was the Hindi version of the grounds of detention which must be regarded as authentic, and the validity of the detention must be judged with reference to the Hindi version of the grounds of detention, and not the English version; secondly, even if the Court were to confine itself to the English version of the grounds of detention, it was clear that, at the end of each of the grounds, it was stated, in so many words, that the acts of the petitioner were prejudicial to the maintenance of public order, and there was no reference therein regarding prejudice to the Security of the State; it is only in the conclusion based on these acts that a recital was found of the satisfaction that, if the petitioner was allowed to remain at large, he would indulge in activities prejudicial to the maintenance of public order *or* the Security of the State; the words “or the Security of the State” were obviously incongruous in the context; they did not fit in with the conclusion drawn at the end of each of the grounds which was confined only to the maintenance of public order and nothing more; there could be no doubt that these words had crept in the English version of the grounds of detention through some mistake; and the order of detention could not be invalidated on the basis of such an obvious error, ignoring the order

of detention in both its Hindi and English versions, the Hindi version of the grounds of detention and the totality of the context in so far as the English version was concerned.

The Supreme Court has, in **Binod Bihari Mahato**²³, no doubt held that an inadvertent error in the English translation of the grounds of detention does not vitiate the order of detention, as the Hindi version of the grounds contained the relevant particulars. In the present case also, the Telugu version of the grounds of detention does not use the word 'manufacture'. It is, however, not even the case of the detaining authority, in the counter-affidavit filed by him before this Court, that the error had crept in the English translation because of inadvertence. In the absence of any such plea, this Court may not be justified in recording a finding, based merely on the submission made across the bar, that the error in the English translation of the grounds of detention is because of inadvertence. As none of the five charge-sheets refer to the detenu having carried on manufacture of illicitly distilled liquor, reference to "manufacture", with respect to two grounds in the English version of the grounds of detention, indicates non-application of mind by the detaining authority for it cannot be said with any degree of certainty, that, if the detaining authority did not suffer from the misconception that the detenu had carried on activities of manufacture of illicitly distilled liquor, he would still have passed the order of detention. It is, however, wholly unnecessary for us to delve on this aspect any further, as it would suffice to set aside the order of detention on any one of the grounds urged in challenge to its validity.

Let us now consider the judgments cited across the bar on whether it was necessary for the detaining authority to pass an order of detention, and whether the provisions of the A.P. Prohibition Act or the A.P. Excise Act would have sufficed to act as a deterrent. In **Boya Chinna Subbarayudu v. The Collector and District Magistrate , Kurnool**^[26], a Division bench of this Court held that the answer to the question, whether selling of illicit arrack itself is an act which constitutes a grave and widespread danger to life or public health, must be in the negative; and, unless the arrack illicitly sold contains substances which constitute grave danger to life or public

health, no order of detention can be issued under Section 3 of the Act.

In **Doddi Sharada v. Collector and District Magistrate, Hyderabad**^[27], a Full bench of this Court held that public order, in terms of the Explanation to Section 2(a) of the Act, would also include persons who cause harm and danger to public health; if the Magistrate was satisfied that the activities of a person were dangerous to public health, he was authorized to order detention of such a person; the answer to the question, whether in order to come to a subjective satisfaction as to whether an activity of a person would cause danger to public health, it was necessary for that authority to know what was being sold or distributed by a person was fit for human consumption or should he also know what percentage of the ingredients which it contained were harmful to the human beings in consumption, was that mere production of illicit liquor is danger to public health; but, because of the definition in Section 2 of Act 1 of 1986, and the power under Section 3 of the said Act, it would be difficult for a detaining authority to detain a person merely on the ground that such person was dealing with illicit liquor, because he has to satisfy himself that illicit liquor would cause danger to public health; mere production, distribution or sale of illicit liquor may not be a relevant ground for a detaining authority to detain a person, but if he is satisfied, on the basis of material before him, that such illicit liquor would cause danger to public health, then the ground would be relevant; what is necessary for the District Magistrate to arrive at the subjective satisfaction, on the basis of the material before him, was that the activities of the person was prejudicial to maintenance of public order; in terms of the Explanation to Section 2(a) of Act 1 of 1986; public order would also mean danger to public health; and if the Public Analyst, on an analysis of the seized sample, was of the opinion that it is not potable or was not fit for human consumption, that was relevant material for the purpose of arriving at the subjective satisfaction; it was not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst; even if a Public Analyst gave the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know

as to whether the sample was injurious to health or not; and it was basically the opinion of the Public Analyst, which was paramount in determining whether the liquor, that was being sold, stored or manufactured would cause danger to public health.

In **Munagala Yadamma v. State of A.P.**,^[28] the Supreme Court held that the offences alleged to have been committed, by the appellant before the Supreme Court, were such as to attract punishment under the Andhra Pradesh Prohibition Act, but that had to be done under the said law; taking recourse to preventive detention laws was not warranted; Preventive detention involved detaining a person without trial in order to prevent him/her from committing certain types of offences; such detention could not be made a substitute for the ordinary law, and absolve investigating authorities of their normal functions of investigating crimes which the detenu may have committed; and 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.

In **K. Nageswara Naidu**² the Supreme Court, after noting that the Division bench of the Andhra Pradesh High Court had dismissed the writ petition, relying on the two -Judge Bench decision of the Supreme Court in **G. Reddeiah v. Govt. of A.P.**^[29], observed that, when the decision was rendered by the Division Bench of the High Court, the decisions rendered in **Yumman Ongbi Lembi Leima v. State of Manipur**^[30] and **Munagala Yadamma**²⁸ were not available, though the decision in **Rekha**¹ was; when the decision of the three -Judge Bench in **Rekha**¹ was available on the same issue, judicial discipline demanded that the Division Bench of the High Court should have followed the same; judicial discipline was one of the fundamental pillars on which the judicial edifice rests; and, if such discipline is eroded, the entire edifice would be affected.

While the submission urged on behalf of the petitioner that ordinary laws would have sufficed to act as an effective deterrent, and it was unnecessary to resort to preventive detention under Act 1 of 1986, cannot be said to be without merit, it is unnecessary for us to dwell on this aspect, as

the order of detention must be set aside on the short ground that failure to furnish copies of the bail orders to the detenu, while he is in preventive custody, would vitiate the order of detention itself.

As the order of detention is liable to be set aside on the ground that the detenu was not furnished copies of bail orders, which were relied upon by the detaining authority, we refrain from examining either of the other contentions that the order of detention should be set aside for non-application of mind, and for being influenced by non-existent grounds of the detenu having, among others, also manufactured illicitly distilled liquor; and that recourse to the draconian provisions of Act 1 of 1986 was unnecessary in the facts and circumstances of the present case for it is well settled that 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**^[31]; **Shibban Lal Saxena v. State of U.P.**^[32]; **Ram Manohar Lohia v. The State of Bihar**^[33]; **Pushkar Mukherjee v. State of W.B.**^[34]; and **Biram Chand v. State of U.P.**^[35]). 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 public order. (**Mohd. Yousuf Rather v. State of W.B.**^[36]; **Keshav Talpade v. King-Emperor**^[37]; **Tarapada De v. State of W.B.**^[38]; **Shibban Lal Saxena**³²; **Pushkar Mukherjee**³⁴; **Satya Brata Ghose v. Mr Arif Ali, District Magistrate, Sibasagar, Jorhat**^[39]; **K. Yadava Reddy v. Commissioner of Police, Andhra Pradesh**^[40]).

As the continued detention of the detenu stands vitiated, for the reason of the detaining authority's failure to furnish the detenu copies of the bail orders relied upon in the grounds of detention, the Writ Petition is

allowed, the order of detention is set aside, and the detenu shall be 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

M.SATYANARAYANA MURTHY, J

Date:31.03.2016.

Note: L.R. copy to be marked.
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- [\[1\]](#) (2011) 5 SCC 244: (2011) 2 SCC (Cri) 596
 - [\[2\]](#) 2012 (11) SCALE 409
 - [\[3\]](#) (1981) 2 SCC 427 = AIR 1981 SC 728
 - [\[4\]](#) (1980) 4 SCC 531
 - [\[5\]](#) (1990) 2 SCC 1
 - [\[6\]](#) (1975) 2 SCC 81
 - [\[7\]](#) 2016(1) ALT 738 (D.B)
 - [\[8\]](#) (1981) 1 SCC 419
 - [\[9\]](#) (1980) 4 SCC 544
 - [\[10\]](#) (1982) 3 SCC 216
 - [\[11\]](#) (1980) 2 SCC 270
 - [\[12\]](#) AIR 1981 SC 746
 - [\[13\]](#) (1980) 4 SCC 525
 - [\[14\]](#) (1980) 4 SCC 499
 - [\[15\]](#) (1981) 2 SCC 436
 - [\[16\]](#) (1981) Supp SCC 53(1)
 - [\[17\]](#) AIR 1991 SC 336 = 1991 Supp (2) SCC 274
 - [\[18\]](#) (1981) 2 SCC 709
 - [\[19\]](#) (2006) 3 SCC 321
 - [\[20\]](#) (1992) 1 SCC 1
 - [\[21\]](#) (2006) 7 SCC 337
 - [\[22\]](#) (1991) 1 SCC 128
 - [\[23\]](#) (1975) 3 SCC 328
 - [\[24\]](#) AIR 1972 SC 1749
 - [\[25\]](#) (1973) 1 SCC 297
 - [\[26\]](#) 1994 (3) ALT 467 (DB)

- [\[27\]](#) (2005) 2 ALT 244
- [\[28\]](#) (2012) 2 SCC 386
- [\[29\]](#) (2012) 2 SCC 389
- [\[30\]](#) (2012) 2 SCC 176
- [\[31\]](#) (1975) 3 SCC 722
- [\[32\]](#) 1954 SCR 418
- [\[33\]](#) AIR 1966 SC 740
- [\[34\]](#) (1969) 1 SCC 10
- [\[35\]](#) (1974) 4 SCC 573
- [\[36\]](#) (1979) 4 SCC 370
- [\[37\]](#) 1943 FCR 49
- [\[38\]](#) AIR 1951 SC 174
- [\[39\]](#) (1974) 3 SCC 600
- [\[40\]](#) ILR 1972 AP 1025