

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.29537 of 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

A writ of Habeas Corpus is sought for setting at liberty the detenue by name Bathini Mahender, S/o Sudarshan of Warangal District.

The Collector & District Magistrate, Warangal District, passed orders on 16.07.2015, exercising the power available with her under Subsection 2 of Section 3 of The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, preventively detaining Sri Bathini Mahender on the ground that he squarely answers the description of the term 'bootlegger' as defined in Section 2(b) of the Act. This detention order has been approved by the State Government through their G.O.Rt.No.2048 General Administration (Law & Order) Department dated 22.07.2015. The Advisory Board constituted under Section 9, has tendered its opinion on 14.08.2015 and based thereon, the State Government has passed orders through their G.O.Rt.No.2047 General Administration (Law & Order) Department dated 31.08.2015 ordering for the detention of the detenue for a period of 12 months from the date of his detention namely 16.07.2015. Challenging these orders, in effect, the present writ petition is instituted.

The Collector & District Magistrate, Warangal, for arriving at her subjective satisfaction that the activities carried on by the detenue are dangerous, has taken into account and consideration five different cases.

In the first ground, the incident that took place on 28.02.2015 at about 9.30 AM, pursuant to a raid conducted by the Prohibition and

Excise Sub Inspector, Enforcement, Warangal was taken into account. The detinue was arrested during the said raid. 40 litres of Illicitly Distilled Liquor was seized and 20 litres out of this, it is alleged belonged to the detinue. The detinue was released on bail on the same day. The samples drawn from the seized contraband, when analyzed by the Government Chemical Examiner, Regional Prohibition and Excise Laboratory, Warangal revealed that the sample is an Illicitly Distilled Liquor unfit for potable purpose and injurious to health. A charge sheet was filed in this crime and the trial also commenced in C.C.No.148 of 2015. The second incident relied upon is the one which has taken place on 17.10.2014 at 5:15 AM where Prohibition & Excise Station, Warangal Urban conducted raid and arrested the detinue and also seized 130 litres of Illicitly Distilled Liquor and an auto-rickshaw through which it is transported. He was released on bail on 17.10.2014. The Government Chemical Examiner analyzed the samples drawn and found them as Illicitly Distilled Liquor unfit for potable purpose and injurious to health. Charge sheet is filed and trial has commenced in C.C.No.188 of 2015. The third incident occurred on 25.04.2014 at 04.45 AM where the Prohibition & Excise Sub Inspector, Prohibition & Excise Station, Warangal Rural carried out raid and detected a case and seized 20 litres of Illicitly Distilled Liquor. The Chemical Examiner filed an identical report about the analysis of the sample as was done in the above referred cases. Charge sheet is filed and trial has commenced in C.C.No.175 of 2015. The next incident relied upon relates to an event that had occurred on 08.01.2014 where the Police Team, P.S. Mills Colony, Warangal conducted raids and seized 50 litres of Illicitly Distilled Liquor and it is alleged that the detinue ran away from the scene of offence and he was arrested on 28.01.2014 and he was subsequently enlarged on bail by the Criminal Court on 30.01.2014 and the Chemical Examiner filed his analysis on the samples drawn as Illicitly Distilled Liquor unfit for potable purpose and injurious to health. Charge sheet is filed and

trial has commenced in C.C.No.183 of 2015. The next incident occurred on 11.09.2013 at about 11:15 AM where the Prohibition and Excise Sub Inspector, ESTF, Warnagal, conducted a raid and arrested the detainee along with another person after seizing 10 litres of Illicitly Distilled Liquor. Out of which it is alleged 5 litres belong to the detainee. He was produced before the Criminal Court which enlarged him on 12.09.2013. The Chemical Examiner filed similar report in his analysis as Illicitly Distilled Liquor unfit for potable purpose and injurious to health. Charge sheet is filed and the trial has been conducted in C.C.No.178 of 2015. It is the case of the detaining authority that the periodical raids conducted and the criminal cases booked is not producing any effect on the detainee and his activities are going on unabated. Therefore, it is considered that the activities indulged in by the detainee are dangerous and hence, the detainee is liable to be detained.

The activities said to have been indulged in by the detainee as narrated by the detaining authority certainly bring out that the detainee answers the description of 'bootlegger' as defined in Section 2(g) of the Act. But however, it should have occurred to the Collector and the District Magistrate that the Prohibition & Excise departmental officials are not diligently prosecuting the criminal cases against the detainee. The fifth ground relied upon by the detaining authority related to a raid that took place on 11.09.2013 while the fourth incident took place on 08.01.2014, while the third one on 25.04.2014 while the second incident related to 17.10.2014, while the first one related to 28.02.2015, whereas, the corresponding criminal cases are C.C.No.178 of 2015, C.C.No.183 of 2015, C.C.No.175 of 2015, C.C.No.188 of 2015, C.C.No.148 of 2015 respectively. This clearly brings out that after a long lapse of time, after the incidents, charge sheets are filed. No explanation is offered as to why charge sheets are filed belatedly.

So, the incidents which took place in September, 2013,

January, 2014 and April 2014 are sought to be prosecuted along with the incidents that took place in October 2014 and February 2015 by filing charge sheets so belatedly. Obviously, all the charge sheets are filed hurriedly sometime prior to sponsoring the case of the detainee for preventive detention. Then, can it be justifiably stated that the ordinary criminal law is not acting as a deterrent for the detainee.

A three Judge Bench of the Hon'ble Supreme Court in ***Rekha vs. State of Tamil Nadu***^[1] after having traversed the legal principles on the subject has set out that in paragraph No.29 as under:

“Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.”

The ordinary law has not been effectively utilised by the prosecuting agency viz., Prohibition and Excise Department. Therefore, taking recourse to preventive detention appears to be untenable.

Hence, we are of the opinion that the detention order is not sustainable and we therefore, allow this writ petition holding the further continuance of detention of the detainee is illegal. Hence, we set-forth at liberty the detainee, if his detention is not called for any further in connection with any other cases.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

16.02.2016

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[\[1\]](#) (2011) 5 SCC 244