

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

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WRIT PETITION No.5605 of 2016

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ORDER

(Per Hon'ble Sri Justice M.Seetharama Murti)

This writ petition by the wife of Yata Kumara Swamy under Article 226 of the Constitution of India is filed seeking the following relief:

“Therefore, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Habeas Corpus, directing the 3rd respondent to produce the detenu viz., Yata Kumaraswamy now detained in Central Prison, Warangal before this Hon'ble Court and order for his release after declaring the detention order issued by the 2nd respondent dt.30-09-2015 bearing Proc. No.402/2015/ P&E/MBD/B2 as confirmed by the 1st respondent vide G.O.Rt.No.3372 dated 19-12-2015 as being illegal, arbitrary, unilateral and unconstitutional and violative of Article 21 and 22 of the Constitution of India, and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.” [Reproduced verbatim]

2. Yata Kumara Swamy (hereinafter, 'detenu') was subjected to preventive detention under Order of Detention, dated 30.09.2015, passed by the Collector and District Magistrate, Warangal, in exercise of power under Section 3(1) and 3(2) read with Section 2(a) and (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter, 'Act 1 of 1986').

3. After passing of the detention order aforementioned, the said detention order was approved by the Government of Telangana, vide G.O.Rt.No.2733, General Administration (Law & Order) Department, dated 09.10.2015. Thereafter, the matter was referred to the Advisory Board and upon considering the opinion and report, dated 17.11.2015, of the Advisory Board, the Government of Telangana confirmed the detention of the detenu for a

period of twelve months from the date of his detention, 03.10.2015, vide G.O.Rt.No.3372, General Administration (Law & Order), dated 19.12.2015.

4. We have heard *Sri K.Rajasekhar*, learned counsel for the petitioner and the learned Government Pleader for Home appearing for the State.

5. Though various issues are sought to be canvassed against and in support of the detention of the petitioner's husband, we find that it is necessary to deal with a few issues, which are sufficient for resolution.

5.1 One of the principal contentions is that the grounds of detention refer to four crimes, viz., COR No.001/15-16, COR No.594/2015-16, COR No.303/2015-16 and COR No.799/2014-15 all on the file of the Prohibition & Excise Station, Parkal of Warangal District, and that the detenu was released on bail in three of the four crimes, but copies of the bail orders were neither supplied to the detaining authority nor to the detenu. On this aspect, in the counter affidavit of the Collector and District Magistrate, it is stated that the detaining authority considered the entire material and was satisfied that the cases registered against the detenu have no deterring effect in curbing his bootlegging activities and that he continued to indulge in similar offences after his release on bail one after the other and that therefore, the detenu is not amenable to ordinary law and hence, preventive detention is necessary to prevent him from indulging in such offences, which are detrimental to public order, public life, public health and interests of larger public. It is undisputed that copies of bail orders are not produced before the detaining authority. However, without looking into such bail orders, it was mentioned in the detention order that the detenu was released on bail in three of the four crimes, which are mentioned in the grounds of detention. The basis for such a reference is only the sponsoring authority's letter and the information therein that the detenu was released on bail in three crimes. This fact indicates that the detaining authority mechanically accepted the sponsoring authority's information without verifying the necessary documents and without application of mind.

5.2 In **Vasanthu Sumalatha v. State of Andhra Pradesh**^[1], a Division Bench of this Court, on a comprehensive conspectus of the development of law on the subject, recorded various legal principles governing the subject of preventive detention. On the relevant aspect of non-supply of copies of bail orders, it is held in the cited decision as follows:

“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.”

6. When a contention was advanced that the order was passed mechanically without application of mind, the learned Government Pleader, on the directions of this Court, produced the file of the detaining authority relating to the case. A plain perusal of the same shows that the Prohibition & Excise Superintendent, Mahabubabad Unit, addressed letter dated 03.10.2015 to the Collector and District Magistrate, Warangal, sponsoring the detention of the detenu under the provisions of Act 1 of 1986 and furnished to the Collector and District Magistrate along with the said sponsoring letter not only material documents but also the preventive detention order and grounds for preventive detention for approval. The same, as furnished by the sponsoring authority, were obviously approved by the Collector and District Magistrate, Warangal District, as is borne out by the record and the detention order came to be passed as sponsored by the sponsoring authority without independent application of mind by the detaining authority to the facts of the case. On this short ground alone, which is fatal, the detention order is liable to be set aside.

7. Viewed thus, we find that there is acceptable merit in the principal contentions of the petitioner and that the writ petition deserves to be allowed.

8. The writ petition is accordingly allowed and the impugned detention

order, dated 30.09.2015, passed by the Collector-cum-District Magistrate, Warangal, and the confirmation thereof by the Government of Telangana, vide G.O.Rt.No.3372, General Administration (Law & Order) Department, dated 19.12.2015, are hereby set aside. The petitioner's husband-Yata Kumara Swamy shall be set at liberty forthwith unless his confinement is required in relation to any other case.

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

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

26th August, 2016
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