

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

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WRIT PETITION No.5603 of 2016

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ORDER

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

The petitioner is the wife of Islavath Tara Chand, who was subjected to preventive detention under Order of Detention, dated 28.09.2015, passed by the Collector and District Magistrate, Khammam, in exercise of power under Section 3 (1) and (2) read with 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 (herein after, 'Act 1 of 1986').

2. By way of this writ petition, the petitioner laid a challenge to the detention order dated 28.09.2015 referred to supra. The said detention was approved by the Government of Telangana under G.O.Rt.No.2712, General Administration (Law & Order) Department, dated 07.10.2015. Thereafter, the matter was referred to the Advisory Board. Upon considering the opinion and report dated 13.11.2015 of the Advisory Board, the Government of Telangana confirmed the detention of Islavath Tara Chand (hereinafter, 'the detenu') for a period of twelve months from the date of his detention, 30.09.2015, vide G.O.Rt.No.3371, General Administration (Law & Order) Department, dated 19.12.2015.

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

4. Though various grounds are urged on behalf of the detenu, one of the grounds on which the detention of the petitioner's husband is challenged is as under: 'All the materials relied upon by the detaining authority including the copies of the bail orders were not made available to the detenu within the statutory time of five days. Some of the documents supplied to the detenu are illegible.'

5. The learned counsel for the petitioner would also contend as under: “In the grounds of detention, there is a reference to three crimes; the detaining authority mentioned that in all the three cases, the detenu was enlarged on bail even though the bail orders, or any other material to come to such a conclusion, were not placed before the detaining authority by the sponsoring authority. Without application of mind and without looking into any material documents including bail orders, the contents of the sponsoring authority’s letter are mechanically incorporated in the detention order. The said fact indicates non-application of mind. To enable the detenu to exercise his right to make an effective representation against his detention, it is necessary that all the relevant material including the copies of bail orders are furnished to him. The order of detention is a cyclostyled/predetermined order and is one passed without application of mind. The copy of the detention order, dated 14.10.2015, passed in R.C.No.C1/3025/2015 in the case of another detenu, Vankudoth Mohan, if examined in juxtaposition with the detention order of the present detenu, it would be clear that except in regard to the details of the cases in which the two detenues were allegedly involved, the rest of the contents of the detention orders in both the cases are verbatim same. This fact would thus lay bare that the orders are being passed in each and every case with the same content without the independent thought that is required in matters of this serious nature and without application of mind.”

6. We have gone through the counter affidavit filed by the Collector and District Magistrate, Khammam. In the counter affidavit, it is stated that the detaining authority, having gone through the entire material pertaining to all the three cases, was satisfied that despite registration of several cases under the Prohibition and Excise laws, there was no desired effect in curbing the detenu’s illegal bootlegging activities and that the detenu continued his habitual activities even after his release on bail in one case after the other. It is also stated that all mandatory procedures and the provisions of law have been strictly followed and that the allegations in the writ petition are incorrect.

7. We have also perused the detaining authority’s case file which is

produced by the learned Government Pleader.

8. Dealing first with the principal contention that bail orders in the three crimes were not submitted to the detaining authority by the sponsoring authority and that the copies of the said bail orders were not furnished to the detenu, it is undisputed before this Court that the bail orders were neither supplied to the detaining authority for arriving at the subjective satisfaction nor were the copies of the same supplied to the detenu. However, even without looking into any bail orders, the detaining authority simply extracted the grounds of detention from the sponsoring authority's letter and reproduced the same in the detention order. This fact clearly indicates non-application of mind by the detaining authority before arriving at subjective satisfaction. In fact, the content of the grounds of detention is an exact and verbatim reproduction of the contents of the letter of the sponsoring authority addressed to the detaining authority. The verbatim reproduction to the letter would prompt us to accept the submission made on behalf of the petitioner that a soft copy was obviously furnished by the sponsoring authority and that the contents thereof were copied as it is into the detention order without application of mind. The said course adopted would make it manifest that the detention order was passed without even independent thought and application of mind.

9. It is also significant to note that when there is a mention of only three crimes in which the detenu was allegedly involved, it remains unexplained as to how the detaining authority came to the conclusion that the detenu was caught a number of times and that he is a habitual offender and was involving in bootlegging activities of manufacturing, purchase, sale, possession and transportation of illicit distilled liquor. It is also unexplained as to how the detaining authority observed in the detention order to the effect that it is also very much clear that despite number of cases being booked against the detenu, the detenu has been continuing to abuse the provisions of the A.P Prohibition Act. Therefore, from a plain reading of the detention order, it is clear that a routine order was passed without application of mind and without

any material in support of the observations to the effect that the detenu was involved in a number of cases and that a number of cases were booked against him. Further, as rightly pointed out, the detention order insofar as the general observations therein are concerned is a verbatim reproduction of the detention order dated 14.10.2015 in R.C.No.C1/3025/2015 passed in relation to another detenu, Vankudoth Mohan. Therefore, it is manifest that the order was passed as a reflex action to the sponsoring authority's letter without application of mind.

10. Dealing further with the contention with regard to non-furnishing of the copies of bail orders, it is necessary to refer to the decision in **Vasanthu Sumalatha v. State of Andhra Pradesh**^[1], wherein a Division Bench of this Court, having made copious reference to precedents, held 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.”

11. Further, our attention was drawn to a few of the documents filed before the detaining authority by the sponsoring authority and copies of the same, which were supplied to the detenu to show that the said documents are illegible. We are satisfied that the pages pointed out from the said material to us were indeed illegible. As per the ratio in the **Vasanthu Sumalatha** (1 supra), if the copies of the documents supplied to the detenu are illegible, the safeguards provided by the Constitution must be held to have not been followed. It was also held in the above decision that failure to supply legible copies affects the right of the detenu to submit an effective representation and has thereby, rendered his detention illegal.

12. The detention order, wherein a reference was made to a number of cases in which the detenu was allegedly involved, discloses that though there is no material supplied in that regard to the detenu, his alleged history

and antecedents were taken into consideration by the detaining authority. Whether the said observations in the order of the detaining authority are based on any material or not also remains unexplained. Such reliance on the detenu's alleged history and antecedents, which is not spelt out by the material documents that were supplied to the detenu resulted in denying him an opportunity to make an effective representation as guaranteed under Article 22(5) of the Constitution of India. In consequence, the detention of the petitioner's husband-Islavath Tara Chand is rendered wholly illegal and, hence, cannot be sustained.

13. To sum up: Admittedly, as some of the documents furnished to the detenu are not legible and as the copies of the bail orders were not furnished to the detenu and further, as the order, on the face of it, appears to be one passed mechanically without application of mind, we are of the considered view that the State cannot seek to support the order of detention in the present case as it failed to comply with the requirement of Article 22(5). Since the detenu was prevented from making an effective representation by virtue of the fact that he was not made aware of all the material that was relied upon by the detaining authority in reaching its subjective satisfaction, the order of detention dated 28.09.2015 is liable to be set aside.

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

15. The writ petition is accordingly allowed and the impugned detention order dated 28.09.2015 passed by the Collector and District Magistrate, Khammam, and the confirmation thereof by the Government of Telangana, vide G.O.Rt.No.3371, General Administration (Law & Order) Department, dated 19.12.2015, are hereby set aside. The petitioner's husband-Islavath Tara Chand shall be set at liberty forthwith unless his confinement is required in any other case. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light

of this final order.

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

26th August, 2016
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