APHC010410912026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

THURSDAY, THE 12th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 22073 OF 2026

Between:

1. AYITIREDDI BHARATHI, W/o. Ashok, occ House wife Aged 25 years, R/o, Rolugunta Mandlam, Benna Bhupala Patnam, Visakhapatnam, Andhrapradesh.

...PETITIONER

AND

1. The State of Andhra Pradesh, Represented by its Chief Secretary, Secretariat Buildings, Amaravathi at Velagapudi, Guntur District - 522237.

2. The Principal Secretary to GpvemnientFAC, Revenue(Excise-II) Department, State of Andhra Pradesh, Secretariat Buildings, Amaravathi at Velagapudi, Guntur District - 522237.

3. The Superintendent of Police, Anakapalli District - 531002.

4. The Superintendent, Central Prison, Visakhapatnam Visakhapatnam District - 536040.

...RESPONDENTs

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased toissue writ order or direction more particularly one in the nature of writ of Habeas Corpus under Article 226 of the constitution of India directing the 4th respondent to

produce Aaetireddy Ashok, S/o Aaetireddy Ramarao, who is now detained in Central Prison, Visakhapatnam before this Honble Court and he may be ordered to be released forthwith after declaring his detention vide orders passed in G.O.Rt.No.458, dt. 25.03.2026, passed by the 2nd respondent which was confirmed by the orders passed in G.O.Rt.No. 645, 30.04.2026 Revenue (Excise-II) Dept., as illegal and un constitutional

Counsel for the Petitioner: D PURNACHANDRA REDDY

Counsel for the Respondents: ADDL ADVOCATE GENERAL

The Court made the following order:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 22073 OF 2026

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri D. Purna Chandra Reddy, learned counsel for the petitioner and Sri Akula Venkata Sai Jagadeesh, learned Assistant Government Pleader appearing for the respondents.

2. The petitioner is the wife of the alleged detenu namely Aaetireddy Ashok, S/o Aaetireddy Ramarao, presently detained in Central Prison, Visakhapatnam. The petitioner has filed this writ petition for writ of Habeas Corpus under Article 226 of the Constitution of India also challenging the order of preventive detention of the detenu.

3. With respect to the detenu, an order of preventive detention vide G.O.Rt.No.458, Revenue (Excise.II) Department, dated 25.03.2026 was passed by the Principal Secretary to Government (FAC), Revenue (Excise-II) Department under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act, 1988). The said order was confirmed vide G.O.Rt.No.645, Revenue (Excise.II) Department, dated 30.04.2026 by the State after receipt of the report of the Advisory Board. The detenu is in preventive detention since 28.03.2026 for the maximum period of 12 months.

The representation submitted on behalf of the detenu against the order of detention was also rejected vide Letter No.REV01-CPE0MISC/530/2025-EXCISE-II, dated 08.07.2026.

4. The preventive detention order was passed on the following three (03) grounds i.e., the criminal cases:

i. Cr.No.61/2015 under Section 20(b) of NDPS Act, 1985 of Rolugunta Police Station, Anakapalli District (dated 29.06.2015).
ii. Cr.No.82/2021 under Section 20(b)(ii)(C), 25 r/w 8(c) of NDPS Act, 1985 of Rolugunta Police Station, Anakapalli District (dated 27.05.2021).
iii. Cr.No.213/2023 under Section 20(b)(ii)(B) r/w 8(c), 25 of NDPS Act, 1985 of S. Rayavaram Police Station (dated 16.05.2023).

5. Learned counsel for the petitioner raises the following submissions:

i) The order of preventive detention has been passed on three grounds i.e., the aforesaid three criminal cases vide (i) Cr.No.61/2015 under Section 20(b) of NDPS Act, 1985 of Rolugunta Police Station, Anakapalli District, (ii) Cr.No.82/2021 under Section 20(b)(ii)(C), 25 r/w 8(c) of NDPS Act, 1985 of Rolugunta Police Station, Anakapalli District and (iii) Cr.No.213/2023 under Section 20(b)(ii)(B) r/w 8(c), 25 of NDPS Act, 1985 of S. Rayavaram Police Station. The 1st criminal case is of the year 2015, the 2nd criminal case is of the year 2021 and

the 3rd criminal case is of the year 2023. He submits that the order of preventive detention has been passed on 25.03.2026, i.e., almost 3 years from the last criminal case and almost 11 years from the first criminal case. He submits that there is no live and proximate link and there is no nexus for passing the order of preventive detention after such a long period and if it was so required, the order should have been passed immediately.

ii) He further submits that the detenu was not informed of his right to make representation to the Central Government. Though the right to represent against the order of detention to the detaining authority and also to the Advisory Board was informed, and though the representation filed on behalf of the detenu before the detaining authority was rejected, the detenu has the fundamental right to be informed of making the representation to the Central Government as well, and since it was not so informed, there is violation and consequently, no representation could be made to the Central Government.

6. Learned counsel for the petitioner placed reliance in the following cases:

i. Kamleshkumar Ishwardas Patel v. Union of India[1]
ii. Alfiya. A v. State of Kerala[2]; and
iii. Pangi Mangamma v. The State of Andhra Pradesh and others[3]

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[1] **(1995) 4 SCC 51**
[2] **SLP (Crl.) No.8439 of 2026, decided on 28.07.2026**

7. Learned Assistant Government Pleader could not dispute the aforesaid submissions which are borne out from the record. He however submits that the detenu's representation was rejected by the detaining authority and the detaining authority has recorded the satisfaction as required based on the material that in order to effectively control the illegal activities and ganja trading by the detenu, there is no other option but to invoke the provisions of preventive detention.

8. We have considered the aforesaid submissions and perused the material on record.

9. The law is well settled that there must be a proximate and continuous link between the prejudicial activities and the purpose of detention, so as to establish a rational nexus between the two. In ***Mohd. Sahabuddin v. Distt. Magistrate, 24 Parganas***[4] and ***Rajinder Arora v. Union of India***[5] referring to ***T.A. Abdul Rahman v. State of Kerala***[6], the Hon'ble Apex Court held that there should be proximity of time between the prejudicial activities and the purpose of detention, and when there is undue and long delay between the prejudicial activities and the passing of the detention order, the live-link is snapped and the subjective satisfaction stands vitiated.

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[3] **W.P.No.439 of 2026, decided on 10.10.2026**
[4] **(1975) 4 SCC 114**
[5] **(2006) 4 SCC 796**
[6] **(1989) 4 SCC 741**

10. On consideration of the aforesaid submissions, we are of the view that no requisite satisfaction with respect to the existence of the live and proximate link between the crimes of the years 2015, 2021 and 2023 in the passing of the preventive detention order in the year 2026 has been arrived at, and no satisfaction has been recorded on the aforesaid point.

11. In view of ***Pangi Mangamma v. The State of Andhra Pradesh and others*****, vide order dated 10.10.2026, passed in W.P.No.439 of 2026**, on the aspect of the right to make representation, we are also satisfied that the detenu under the PIT NDPS Act has the right to make representation to the Central Government, but that was not informed to the detenu as is so reflected from the order of preventive detention. In ***Pangi Mangamma*** *(*Supra), the Coordinate Bench of this Court held as under:

> *"24. So far as the contention with respect to the representation is concerned that, the detenu was not informed of his right to make the representation to the Central Government, under PIT NDPS Act, in Kamleshkumar Ishwardas patel (supra), the Hon'ble Apex Court held as under:*
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> *'14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to*

inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.

* * * *

18. Section 3 of the PIT NDPS Act is on the same lines as Section 3 of the COFEPOSA Act. There is slight difference in sub-section (1) but sub-sections (2) and (3) are identical. Section 12 of the PIT NDPS Act makes provision for revocation of detention orders and is in the same terms as Section 11 of the COFEPOSA Act.

19. The provisions in the COFEPOSA Act and PIT NDPS Act differ from those contained in the National Security Act, 1980 as well as earlier preventive detention laws, namely, the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971 in some respects. Under sub-section (3) of Section 3 of the National Security Act, power has been conferred on the District Magistrate as well as the Commissioner of Police to make an order of detention, and sub-section (4) of Section 3 prescribes that the officer shall forthwith report the fact of making the order to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and that no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government. In Section 8(1) of the National Security Act it is prescribed that the authority making the order shall afford the person detained the earliest opportunity of making a representation against the order to the appropriate Government. Similar provisions were contained in the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971. The COFEPOSA Act and the PIT NDPS Act do not provide for approval by the appropriate Government of the orders passed by the officer specially empowered to pass such an order under Section 3. The said Acts also do not lay down that the authority making the order shall afford an opportunity to make a representation to the appropriate Government.

* * * * *

21. In view of Section 21 of the General Clauses Act the authority which has made the order of detention would be competent to revoke the said order. Section 11 of the COFEPOSA Act and ***Section 12 of the PIT NDPS Act provide for revocation of***

such an order by authorities other than the authority which has made the order*. Under clause (a) of sub-section (1) of both these sections an order made by an officer specially empowered by the State Government can be revoked by the State Government as well as by the Central Government and under clause (b) of sub-section (1) an order made by an officer specially empowered by the Central Government or an order made by the State Government can be revoked by the Central Government****. This means that the Central Government has the power to revoke orders made by —***

(i) the State Government;

(ii) an officer specially empowered by the State Government; and

(iii) an officer specially empowered by the Central Government.

22. Similarly, the State Government has the power to revoke an order made by an officer specially empowered by the State Government. ***In other words, an order made by the officer specially empowered by the State Government can be revoked by the State Government as well as by the Central Government, an order made by the State Government can be revoked by the Central Government and an order made by the officer specially empowered by the Central Government can be revoked by the Central Government****. The conferment of this power on the Central Government and the State Government does not, however, detract from the power that is available to the authority that has made the order of detention to revoke it.* ***The power of revocation that is conferred on the Central Government*** *and the State Government under clauses (a) and (b) of sub-section (1) of Section 11 of the COFEPOSA Act* ***and Section 12 of the PIT NDPS Act is in addition to the power of revocation that*** *is available to the authority that has made the order of detention. This is ensured by the words "without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897)" in sub-section (1) of both the provisions.*

23. If the power of revocation is to be treated as the criterion for ascertaining the authority to whom representation can be made, then the representation against an order of detention made by an officer specially empowered by the State Government can be made to the officer who has made the order as well as to the State

Government and the Central Government who are competent to revoke the order. ***Similarly, the representation against an order made by the State Government can be made to the State Government as well as to the Central Government*** *and the representation against an order made by an officer specially empowered by the Central Government can be made to the officer who has made the order as well as to the Central Government.*

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38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.'

25. So, in the case of ***Kamleshkumar Ishwardas patel*** *(supra),* ***the Hon'ble Apex Court clearly held that under PITNDPS Act, the detenu has a right to make representation to the Central Government as well****, where the detention order has been made by an officer specially authorised by a State Government. In the present case, the order of preventive detention was passed by an officer specially empowered by the State Government.* ***Consequently, the detenu must have been informed of***

his right to make the representation to the Central Government as well, which was not done.

26. In ***Alfiya.A v. State of Kerala****, the Hon'ble Supreme Court while considering the right of detenu to make representation and its consideration observed and held that the fact that the detenu addressed one of his representations to the detaining authority cannot cure the failure to inform him of that constitutional right to make representation to the detaining authority. Para-18 in* ***Alfiya.A*** *(supra) reads as under:*

'18. In the present case, the order of detention was made by the Detaining Authority in exercise of the power conferred upon an officer specially empowered under Section 3(1) of the PITNDPS Act. The detenu was informed that he could make representations to the State Government, the Advisory Board and the Central Government. He was not separately informed that he was entitled to make a representation to the officer who had made the order of detention in exercise of the specially conferred statutory power. The omission is evident from the detention order itself. The fact that the detenu nevertheless addressed one of his representations to the Detaining Authority cannot cure the failure to inform him of that constitutional right. ***The obligation was upon the authority to communicate the right and could not depend upon whether the detenu independently became aware of it.'"***

12. As the detenu admittedly was not informed of his right to make representation to the Central Government, there is violation of his fundamental right under Article 22(5) of the Constitution of India. Further, there is no live and proximate link between the criminal cases of the years 2015, 2021 and 2023 and the order of preventive detention passed on 25.03.2026. The detention of the detenu therefore cannot be sustained.

13. For the aforesaid reasons, the writ petition is allowed. The order of preventive detention dated 25.03.2026, the order of confirmation dated

30.04.2026 and the order rejecting the detenu's representation against the order of preventive detention are set aside.

14. The detenu shall be set at liberty immediately, if he is not in detention in any other pending case.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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RAVI NATH TILHARI,J

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ALAPATI GIRIDHAR,J

Dated: 12.11.2026
SRT

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 22073 OF 2026

Dated: 12.11.2026
SRT