

*THE HONOURABLE SRI JUSTICE*  
**A.GOPAL REDDY**

*and*

*THE HONOURABLE SRI JUSTICE*  
**P.SWAROOP REDDY**

WP No.6467 of 2007

-10-2007

Smt. Kolagati Nookaratnam

..Petitioner

and

1. The Govt. of A.P. rep. by its  
Chief Secretary, Secretariat,  
Hyderabad and others.

..Respondents.

*THE HONOURABLE SRI JUSTICE*  
**A.GOPAL REDDY**

***and***

*THE HONOURABLE SRI JUSTICE*  
**P.SWAROOP REDDY**

W.P. No.6467 of 2007

**ORDER:** (Per Honourable Sri Justice **A.GOPAL REDDY**)

The wife of Ramakrishna, detenu, challenged her husband's detention pursuant to an order dated 24-02-2007 passed by the Collector & District Magistrate, East Godavari District, Kakinada—2<sup>nd</sup> respondent in exercise of powers vested in him under sub-section (2) of Section 3 ordering detention under sub-section (1) of Section 3 of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act 1/1986").

2. The grounds of detention disclose that the detenu was arrested in Cr.No.255/2005-2006 of Prohibition and Excise Station, Tuni on 28-01-2005 for his possessing 5 litres of I.D. liquor and produced before the Judicial First Class Magistrate, Tuni, who remanded him to judicial custody and later he was released on bail on 01-12-2005. After due investigation necessary charge sheet was filed as case is under trial in the Court of Judicial Magistrate of First Class, Tuni in C.C.No.77/2007. Cr.No.283/2006-2007 of Prohibition & Excise Station was registered against the detenu for his transporting 50 litres

of I.D. liquor on cycle and he was arrested and remanded to judicial custody. Later he was released on bail on 17-02-2007, and the case is under trial in C.C.No.78/2007 on the file of Judicial First Class Magistrate, Tuni. In addition to the above cases, to avoid direct involvement, he indulged in similar bootlegging activities through some other persons in Cr.No.279/2006-2007 dated 03-02-2007; Cr.No.280/2006-2007 dated 04-02-2007, both relate to Prohibition & Excise Station, Tuni. In the above said crimes, the detenu was arrayed as second accused. The allegation in Cr.No.279/2006-2007 was that the detenu left the black plastic can containing 20 litres and ran away as stated by Vaddi Ramana, who was arrested on 03-02-2007 for his possessing 2 plastic cans each containing 20 litres of I.D. liquor. So also the allegation in Cr.No.280/2006-2007 dated 40-02-2007 was that the detenu sold 10 litres of I.D. liquor. The illicit nature of the liquor was established, in all the crimes, from the Chemical Analysis reports and the same were found unfit for human consumption and such sale was injuries to health. Therefore, it is necessary to detain him to prevent him from further acting in any manner prejudicial to the maintenance of public order affecting public health and peace in the locality in and around Bendapudi village where agricultural labour predominantly resides. In the detention order, it is mentioned that the detenu had a right to make a representation at the earliest point to the detaining authority for reviewing the detention as per Article 22(5) of the Constitution of India before the Government confirms the order of detention. Further, the detenu had a right to make a representation to the Government under Section 8(1) of the Act 1/1986 and his case will be referred to the Advisory Board for review under Section 10 of the Act 1/1986 and he had a right to be heard personally or through a friend who is not a legal practitioner, if he so desires, under Section

11(1) and 11(5) of the Act 1/1986. If the detenu chooses to do so, he may submit properly addressed representation to the Jailor for onward transmission to the detaining authority, Government and the Advisory Board. The Government on the basis of opinion of the Advisory Board may confirm the detention order and continue the detention for a period not exceeding twelve months from the date of detention under Sections 12 and 13 of the Act 1/1986.

3. The detention order dated 24-02-2007 passed by the Collector and District Magistrate, East Godavari District, Kakinada has been approved by the Government under sub-section (3) of Section 3 of the Act 1/1986 through G.O.Rt.No.1203, G.A.(L&O.II) dated 05-03-2007.

4. On referring the matter to the Advisory Board constituted under Section 9 of the Act 1/1986, it reviewed the case on 29-03-2007 and gave its opinion that there is sufficient cause for the detention of the detenu, Kolagati Rama Krishna s/o Adiviyya, after hearing the detenu and the investigating officer and after going through the records. The Government after considering the report of the Advisory Board and relevant material made available on record confirmed the order of detention and directed that the detention of detenu be continued for a period of 12 months from the date of his detention i.e. 27-02-2007.

5. Questioning the detention order the present writ petition is filed contending that the order of detention passed by the District Collector is arbitrary and illegal; that the public analyst report annexed to cases registered against the detenu does not even say how much percentage of the harmful substances are present in the illicit distilled

liquor and also does not reveal the fact how they are harmful and unfit for human consumption; that order of detention passed by the District Collector does not disclose the period of detention except the period of detention of 12 months upon the recommendation of the Advisory Board, which cause prejudice to the detenu; that for the alleged involvement of the detenu in the cases, the Prohibition & Excise authorities registered crimes and cases are pending before the Courts of law; that once charge sheets are filed before the competent criminal courts, detention order curtailing the liberty of the detenu is not sustainable and the same was passed mechanically without any application of mind.

6. The District Collector filed a counter-affidavit reiterating the allegations levelled in the grounds of detention as well as detention order.

7. Sri K.Srinivasa Reddy, learned counsel for the petitioner contends that non-mention of the period of detention by the detaining authority in the order of detention itself vitiates the detention order, and two cases referred to in the detention order, namely, dated 28-11-2005 and 06-02-2007 are not proximity to each other, namely, Cr.No.255/2005-2006 dated 28-11-2005 is 16 months prior to Cr.No.283/2006-2007 dated 06-02-2007. He further contends that the involvement of the liquor is small quantity of 5 and 20 litres respectively and as the seizure report and confessional statements of other accused have not been supplied to the detenu, the detention is liable to be vitiated. In support of his contentions he placed reliance on the following judgments:

1. **COMMISSIONER OF POLICE AND ANOTHER v. GURUBUX ANANDRAM BHIRYANI**<sup>[1]</sup>
2. **BOYA THAYAMMA v. GOVERNMENT OF A.P. AND OTHERS**<sup>[2]</sup>

3. *S.JAYAMMA v. COLLECTOR AND DISTRICT MAGISTRATE, CUDDAPAH*<sup>[3]</sup>
4. *A.RAJA REDDY v. COLLECTOR AND DISTRICT MAGISTRATE, ADILABAD DISTRICT*<sup>[4]</sup>

8. Per contra, learned Advocate General contends that it is not necessary for the Public Analyst to give composition of all ingredients of sample was fit for human consumption or not, suffice he gave his opinion that the illicit liquor is not fit for human consumption and is injuries to health. He further contends that quantity of liquor seized cannot be criteria for passing a detention order and in fact, in Cr.No.283/2006-2007, 50 litres of I.D. liquor was seized while transporting the same, which is found to be illicitly distilled liquor and injuries to health and in Cr.No.279/2006-2007 the detenu left the black plastic can containing about 20 litres of I.D. liquor and ran away. He further contends that since the detenu is habituated to supply illicit liquor, which is not fit for human consumption and which affects the maintenance of public order, the detaining authority rightly passed the impugned detention order detaining the detenu.

9. In view of the above submissions, the point that arises for consideration is:

“Whether the detention order passed by the detaining authority as approved by the government in G.O.Rt.No.1203 dated 05-03-2007 and confirmed in G.O.Rt.No.1863 dated 07-04-2007 can be sustainable or not?”

10. Before we consider the judgments on which reliance is placed, it is necessary to notice a few provisions of the Act 1/1986, which deals with the detention.

11. For consideration of the question whether the acts of detenu

could be said to in any manner prejudicial to the maintenance of public order, it is necessary to read Section 2(a) of the Act, which defines “*acting in any manner prejudicial to the maintenance of public order*” in these terms:

(a) "acting in any manner prejudicial to the maintenance of public order" means when a bootlegger, a dacoit, a drug offender, a goonda, an immoral traffic offender or a land grabber is engaged or is making preparations for engaging in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.

**Explanation:-** For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health;

Section 2(b) defines bootlegger in these terms:

(b) "bootlegger" means a person, who distils, manufactures, stores, transports, imports, exports sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968, and the rules, notifications and orders made thereunder or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing.

Section 3 confers power to make orders detaining certain persons, which reads thus:

(1) The Government may, if satisfied with respect to any

bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:

**Provided** that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government 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 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 Government.

12. We cannot countenance the submissions made by the learned counsel for the petitioner that non-mentioning of period of detention by the detaining authority vitiates the detention order and the reliance placed in support of the same in **GURUBUX ANANDRAM BHIRYANI's** case (1 supra) which has been overruled in **T.DEVAKI v.**



**GOVERNMENT OF TAMIL NADU**<sup>[5]</sup> wherein the Supreme Court while considering the provisions under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 held that the period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.

13. In **BOYA THAYAMMA'S** case (2 supra) this Court found the material placed on record do not show that the detenu was selling illicitly distilled liquor and that such sale was dangerous to public health and safety. Further, there is nothing in the file produced by the learned Special Government Pleader from which it can be inferred that the detenu was himself engaged in illicit distillation of the liquor found in his possession or that he was indulging in illicit sale of liquor. In the absence of any material produced, namely, public analyst report to show that the illicitly distilled liquor was not potable and unfit for human consumption, which is relevant material for the purpose of arriving subjective satisfaction, this Court quashed the detention order. The same is misplaced to the facts of the present case.

14. In **S.JAYAMMA's** case (3 supra) a full Bench of this Court held that there is no proximity at all between the crimes with reference to the grounds mentioned in the order of detention and even before the report of the analyst is received mentioning the same as one of the grounds of detention is to be held irrelevant and extraneous.

15. In **COLLECTOR & DISTRICT MAGISTRATE, ELURU v. SANGALA KONDAMMA**<sup>[6]</sup> the facts are that this Court set-aside the detention order passed by the District Collector made under Section 3(1)(2) r/w Section 2(a) and (b) of the Act 1 of 1986, which was approved by the State Government and confirmed the detention of the detenue for a period of 12 months from the date of detention i.e. from 15-01-2003 by the Advisory Board holding that two of the grounds of detention out of five were stale grounds and since the said two stale grounds could not be separated from the other grounds, the satisfaction of the detaining authority got vitiated, therefore, the order of detention cannot be sustained. On further appeal, the Supreme Court while upholding the validity of detention order and setting aside the order of the High Court held that it is not necessary for the detenu to be re-arrested to serve out the rest of the period of detention as he was taken into custody on 15-01-2003 and was released from detention pursuant to the order of the High Court on 28-04-2003. While upholding the detention order, the Supreme Court observed as under:

“... if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned in proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside. In the instant case, it is seen that between the period from 10-1-2001 and 25-10-2002 the detenue was involved in five incidents of bootlegging which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention, we think the High Court was not justified in treating the two incidents of 17-1-2000 and 10-1-2001 as stale by taking them in isolation. In our opinion, the court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detenue continuing to indulge in the illegal activities which requires his preventive detention. In the present case, as noticed above, the five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detenue. In such a fact situation, we think the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention and the order of detention was base on stale grounds. While it can be stated that the incidents of 17-1-2000 and 10-1-2001 could not by themselves have been sufficient grounds to detain the detenue but would certainly become a relevant material along with other three grounds dated 3-2-2002, 6-10-

2002 and 25-10-2002 to come to the conclusion that there is a need for detaining the detenue to prevent him from indulging a similar activities in the future.”

16. In view of the same, the previous judgment of this Court in **S.JAYAMMMMA**'s (3 supra) holding that even if one stale and not proximity ground is taken into consideration in arriving at the subjective satisfaction, the detention order in its entirety becomes unsustainable will be applicable to the facts of the said case alone and each case has to be considered on its own merits with regard to proximity of crime, whether it has become stale or not in the light of the law declared by the Apex Court in **SANGALA KONDAMMA** (6 supra), wherein the Apex Court has not agreed with the reasoning adopted by this Court in the above case.

17. It was nextly contended that involvement of liquor, which was seized while transporting for sale, is only small quantity ranging from 5 litres to 20 litres and the same do not affect the public order.

18. The explanation to Section 2 (a), as referred to above, widen the scope of provision in section 2(a) which provides public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health. It follows that if a person is found to be repeatedly indulging such boot legging activities as mentioned in Section 2(b) by himself or through any other person or abets in any manner of such things which are harmful and injuries to the public health falls within the definition of public order.

19. The Supreme Court in **HARPREET KAUR V. STATE OF MAHARASHTRA**<sup>[7]</sup> while considering the identical provision of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 held that “*Public Order*” or “*Law and Order*” are two different and distinct concepts and there is abundance of authority of this Court drawing a clear distinction between the two, with a view to determining the validity or otherwise of the order of detention, it would be necessary to notice the difference between the two concepts. After referring to the various judgments rendered by it, the Supreme Court held as under:

“The explanation to S. 2(a) (supra) brings into effect a legal fiction as to the adverse effect on 'public order'. It provides that if any of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or a wide-spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.”

20. A Full Bench of this Court in **DODDI SHARADA v. COLLECTOR AND DISTRICT MAGISTRATE, HYDERABAD**<sup>[8]</sup> after referring various judgments held as under:

“ ... it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of explanation to Section 2 (a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material

for the purpose of arriving at subjective satisfaction. In our view, it is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives 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. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health.”

21. In the light of the above discussion, if we consider the grounds of detention and papers enclosed with it, an irresistible conclusion can be drawn that the detenu was habituated in commission of crimes and is accustomed to commit crimes of transporting and selling of illicit liquor in and around Bendapudi village and also abetting commission of such crimes through other persons and he is a bootlegger within the meaning of Section 2(b) of the Act 1/1986.

22. It is clear that the detaining authority based its subjective satisfaction on the series of crimes in which detenu was involved. The satisfaction was not on single or stale incident. Cr.No.255/2005-2006 was registered for possessing 5 litres of I.D. liquor in which a charge sheet has been filed in C.C.No.77 of 2007. While the same was under investigation he was involved in Cr.No.283/2006-2007 for transporting 50 litres of liquor on cycle, he was arrested and remanded to judicial custody. Later he was released on bail and facing the trial in C.C.No.78/2007. In addition to the above two cases, he indulged in similar bootlegging activities in Cr.No.279/2006-2007 registered on 03-02-2007, Cr.No.280/2006-2007 registered on 04-02-2007 in which he was arrayed as second accused. In all the crimes samples which were drawn were sent to chemical analyst and the chemical analyst report discloses that the same were found to be unfit for human consumption and sale of such illicit liquor was injuries to public health.

23. In view of the subjective satisfaction reached by the District

Collector with whom the powers were delegated by the State Government under sub-section (2) of Section 3, it is necessary to prevent the detenu from further acting in any manner prejudicial to the maintenance of public order affecting public health and peace in the locality in and around Bendapudi village where agricultural labour predominantly resides and it do not suffer from any perversity or non-application of mind warranting interference. Further, the Advisory Board reviewed the case of the detenu and gave its opinion that there is sufficient cause for the detention of the detenu and after hearing him and considering the entire record the Government has confirmed it. Therefore, the order of detention passed by the detaining authority does not suffer from any infirmities.

24. In view of the same, writ petition fails and it is accordingly dismissed.

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A.GOPAL REDDY, J.

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P.SWAROOP REDDY, J.

-10-2007  
**Murthy**

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- [\[1\]](#) 1988 Suppl. SCC 568
  - [\[2\]](#) 2006 (1) ALD (CrL.) 473
  - [\[3\]](#) 2004(3) ALT 642 (FB)
  - [\[4\]](#) 1996 (4) ALT 305
  - [\[5\]](#) (1990) 2 SCC 456
  - [\[6\]](#) 2005 AIR SCW 159 = AIR 2005 SC 1165
  - [\[7\]](#) AIR 1992 SC 979 = (1992) 2 SCC 177
  - [\[8\]](#) 2005 CrL.L.J.1916 (FB)