

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF APRIL
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No: 4524 of 2009

Between:

Amballa Sailaja W/o.A.Venkata Ramana

R/op.H.No.43-15-15, Kothapeta, Rajahmundry, E.G. District

..... PETITIONER

AND

- 1 State of Andhra Pradesh, rep. by its Principal Secretary General, Administration Department, Secretariat, Hyderabad.
- 2 The District Collector & District Magistrate, East Godavari District at Kakinada

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus directing the respondents herein to produce the detenu i.e. Amballa Venkata Ramana @ Ramana S/o.Late Venkata Rao aged about 29 years, R/o.H.No.43-15-15, Kothapeta, Rajahmundry, East Godavari District before the Hon`ble Court forthwith and to quash the impugned detention order in Rc.No.229/2008/A4 dated 22.12.2008 passed by the 2nd respondent and for a consequential order to set aside the impugned order dated 22.12.2008 and to pass appropriate orders.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following :

ORDER: (per Hon'ble Sri Justice A. Gopal Reddy)

The petitioner, who is the wife of the detenu, namely, Amballa Venkata Ramana @ Ramana, filed this writ petition challenging the detention order passed by the District Collector & District Magistrate, East Godavari District, the second respondent herein in Rc.No.299/2008/A4 dated 22.12.2008 under Section 3 (1)(2) read with Section 2 (a) (b) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act') on the ground that five incidents referred to in the grounds of detention served on the detenu are stale incidents and the same was passed mechanically and on vague grounds.

The detaining authority filed a detailed counter reiterating the grounds of detention, which reads as follows.

1. The Investigating Officer seized the contraband on 20.10.2007 at about 7.30 a.m. while the detenue allegedly supplying 10 liters of I.D. liquor, and registered Crime No.512 of 2007-2008 of Prohibition and Excise Station, Rajahmundry North, under Section 7-A r/w Section 8 (e) of A.P. Prohibition (Amendment) Act 1997 and accordingly he was remanded to the judicial custody. On the detenu surrendering before the II Additional Judicial First Class Magistrate, Rajahmundry, he was enlarged on bail on 23.10.2007.
2. On 28.12.2007 at about 7.00 a.m. the Excise Staff while patrolling in Medarapeta of Rajahmundry Town, arrested Sri G.

Satti Babu, who was in possession of 40 liters of I.D. Liquor said to have been supplied by the detenu (A.2) for sale. Accordingly, the Excise Police arrested the detenu and registered a case in Crime No.681 of 2007-08 dated 28.12.2007 against the said Satiti Babu (A.1) and the detenu (A.2) and remanded them to judicial custody. On the detenu surrendering before the II Additional Judicial First Class Magistrate, Rajahmundry, he was enlarged on bail on 3.01.2008.

3. On 17.01.2008, at about 5.00 p.m., the Excise Officials raided the house bearing Door No.43-15-16, 30th Division, Kothapeta of Rajahmundry Town and found 420 liters of I.D. Liquor, seized the same and registered a case in Crime No.730 of 2007-08 dated 17.01.2008 of Prohibition and Excise Station Rajahmundry for the offence under Section 7-A r/w 8 (e) of the A.P. Prohibition (Amendment) Act 1997. Later the detenu was produced before the III Additional Judicial First Class Magistrate, Rajahmundry on P.T. warrant on 26.02.2008 and thereafter he was released on bail.
4. On 19.02.2008, at about 9.45 p.m., the Sub-Inspector of Police, (L & O) I Town Police Station, Rajahmundry raided the house bearing Door No.43-15-16 Medarapeta, Rajahmundry Town, found three persons including the detenu with three gunny bags of 250 liters of I.D. Liquor, seized the same, arrested the detenu and another while the third person ran away. The Excise Officials registered a case in Crime No.76 of 2008 on 19.02.2008 under Section 7-A & 8(e) of the Prohibition Act and later the detenu was released on bail.
5. On 28.09.2008 at about 1.30 p.m. the Excise Officials raided a house bearing D.No.43-15-16, 29th Division, Medarapeta,

Rajahmundry, found and seized 100 liters of I.D. Liquor, arrested the detenu and registered a case in Crime No.385 of 2008-09 dated 28.09.2008 under Section 7-A and 8 (e) of A.P. Prohibition Act and later the detenu was remanded to judicial custody and subsequently he was released on bail.

In all the above cases, the detenu was found to be in possession and transporting illicitly distilled liquor, which is injurious to health and unfit for human consumption, in contravention of the provisions of the A.P. Excise Act, 1968. In all the cases contraband was seized, samples were drawn and sent for chemical examination to the Government Chemical Examiner, Prohibition and Excise, Kakinada. As per the chemical analyst reports, it was found that all the samples drawn from the seized contraband were found to be "illicitly distilled liquor, unfit for human consumption and injurious to health".

In the first two cases the detenu surrendered before the Court and was enlarged on bail. In the third and fifth cases, he was produced before the III Additional Judicial First Class Magistrate, Rajahmundry, on P.T. warrant and later he was released on bail. Similarly, in fourth case he was produced before the II Additional Judicial First Class Magistrate, Rajahmundry and later he was released on bail. As the detenu was continuously involving in the bootlegging activities i.e., possession, transportation and sale of illicitly distilled liquor for money gain in and around Rajahmundry, which is unfit for human consumption, and as it will adversely affect the public health, the Collector and District Magistrate, East Godavari District, at Kakinada, after satisfying himself that the activities of the detenu are prejudicial to the maintenance of public order and his activities are causing widespread danger to public health and so as to prevent the detenu from further indulging in such activities in future, in exercise of the power vested in him under sub-

sections (1) and (2) of Section 3 of the Act, ordered for his detention until further orders. In pursuance of the order of detention, the detenu was taken into custody on 22.12.2008 and lodged at Central Prison, Rajahmundry, East Godavari District. At the time of taking him into custody the detention order and the material relating to the case were served on the detenu, which was acknowledged by him. The detenu was duly informed that he has a right to make representation to the detaining authority, to the Government and also to the Advisory Board, in compliance of the constitutional/statutory remedy.

The Government in G.O.Rt.No.7283, General Administration (L & O.II) Department, dated 30.12.2008 accorded approval to the order of detention passed by the Collector. Thereafter, the Government referred the matter to the Advisory Board constituted under Section 9 of the Act, which after hearing the detenu, and the investigating officer, and after going through the connected records, opined that there is sufficient cause for the detention of the detenu. The Government, after due consideration of the report of the Advisory Board and the material, in exercise of the powers conferred under sub-section (1) of Section 12 read with Section 13 of the Act, confirmed the order of detention through G.O.Rt.No.383, dated 24.01.2009 and directed that the detention of the detenu be continued for a maximum period of 12 months from the date of his detention.

The learned counsel for the petitioner contends that all the crimes registered earlier referred to in the grounds of detention order are of the year 2005, which are stale claims and the material pertaining to the said crimes has not been supplied to the detenu.

When it was pointed out that the detention order was passed only relying upon five crimes as referred to above, the material pertaining to earlier reference need not be supplied, and failure to supply documents to which reference is made in the grounds of detention is not

infringement of Article 22 (5) of the Constitution fatal to the order of detention as held by the Supreme Court in **L.M.S. Ummusaleema v. B.B. Gujaral**^[1] and mere reference of the earlier crimes is of no consequence, the learned counsel has not pressed the above said contention, and confined his contention only with regard to Crime No.385 of 2009 as stated in Ground No.4 of the writ petition, where 100 liters of I.D. Liquor was seized from the premises bearing Door No.43-15-16, the ownership of which was not vested with the detenu, but it was vested with one Bantupalli Nookaraju. The same is an irrelevant ground and the whole detention vitiates.

We do not see any merit in the above ground, which was advanced by the learned counsel. In the counter affidavit it is categorically stated that two door numbers given in the grounds are interconnected and the said premises belongs to the detenu. In the said crime I.D. liquor was found not only in the premises bearing door No.43-15-16, but also in door No.43-15-15, which are interconnected with each other. No reply has been filed contradicting the said claim.

A Division Bench of this Court in **Shankera Begum v. Government of A.P. and others**^[2] to which one of us is a member, confirmed the detention order rejecting the contention that the impugned order is passed in a mechanical manner and without application of mind.

Further in a series of orders in W.P.No.29004 of 2008 dated 2.04.2009 and W.P.No.28793 of 2008 dated 19.03.2009, this Court after referring to the various provisions of the Act, while dismissing the writ petitions held that the grounds of detention clearly disclose that detenu was habituated in commission of crimes and is accustomed to commit crimes of transporting and selling of illicitly distilled liquor, which contains injurious substances and unfit for human consumption. Once the detenu is indulging in bootlegging activities of transportation and

distribution of illegally manufactured spurious liquor violating the provisions of the Excise Act, which is likely to cause widespread danger to public health and create a feeling of insecurity among the general public and if the same is allowed, there is every possibility of danger to the life or public health, who consumes illicit liquor, which is a prejudicial activity causing danger to public health then public order shall be deemed to have been adversely affected as per legal fiction under explanation to Section 2(a) of the Act. The detaining authority after satisfying that the activities, which were carried on by the detenu, would cause prejudice and adversely affect the public health, particularly the downtrodden and the under-privileged in the area, passed the detention order, which was approved by the Government. When the matter is placed before the Advisory Board, the Advisory Board after providing an opportunity to the detenu opined that there is sufficient cause for the detention of the detenu and the same had been accepted by the Government only to prevent the detenu from perpetuating, transporting and distributing illicitly distilled liquor. The subjective satisfaction arrived at by the detaining authority as approved by the Government is based on sufficient material, which was supplied to the detenu complying the constitutional mandate under Article 22(5) of the Constitution. In view of the same, the detention order passed by the Collector & District Magistrate, Chittoor, as approved by the Government in G.O.Rt.No.6525, dated 14.11.2008 and confirmed in G.O.Rt.No.6895, dated 06.12.2008 does not suffer from any illegality or it violates the constitutional/statutory right of the detenu under Article 22(5) of the Constitution rendering the detention order illegal.

In the present case the detenu has not complained any violation of constitutional/statutory provision as referred to above. In view of the same, we find no infirmity in the subjective satisfaction arrived at by the District Collector, East Godavari District, in passing the detention order

and as approved by the Government.

Accordingly, the Writ Petition is dismissed. No costs.

(A.GOPAL REDDY, J.)

(K.C. BHANU, J.)

30th April, 2009
Js.

[\[1\]](#) AIR 1981 SC 1191

[\[2\]](#) 2009 (1) ALD (CrI.) 168 (AP)