

**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU  
AND  
THE HON'BLE SRI JUSTICE V.SRINIVAS**

**WRIT PETITION No.37492 of 2022**

**ORDER:** *(per Hon'ble Sri Justice V.Srinivas)*

In this writ petition, the petitioner is challenging the order of detention of her husband by name Anagani Yedukondalu, S/o Ganapathi, Aged 47 years, in order of detention vide Rc.No.893/Magl/2022, dated 01.10.2022 passed by the 2<sup>nd</sup> respondent-The Collector and District Magistrate, West Godavari District, which was confirmed by the 1<sup>st</sup> respondent vide G.O.Rt.No.2558, General Administration (SC.I) Department, dated 28.11.2022 and prays to direct the respondent authorities to set the detainee at liberty forthwith.

2. The Collector and District Magistrate, West Godavari District, while categorizing the detainee as a "Bootlegger" within the definition of Section 3(2) r/w.3(1) 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 1 of 1986') passed the impugned order of detention.

3. Heard Sri K.V.Aditya Chowdary, learned counsel for the petitioner and Sri Syed Khader Mastan, learned counsel attached to the office of learned Additional Advocate General for the respondents.

4. Learned counsel for the petitioner submits that the grounds for detention are not at all grievous offences, that he was allegedly

involved in five crimes under Section 7(B) r/w.8(E), 8(B) and 8(A) of Andhra Pradesh Prohibition Act, 1995 and they can be dealt under general laws. It is also stated that the relevant material did not placed before the detaining authority by the sponsoring authority to come to just conclusion and the impugned order is passed mechanically. Even as per detention order the detenue allegedly involved in five crimes, out of which charge sheet was already laid in four crimes and the same are numbered and undergoing trial and he also he was granted bails in all the crimes.

5. Per contra, Sri Syed Khader Mastan, learned counsel attached to the office of Additional Advocate General reiterating the averments made in the counter affidavit filed by the respondents, justifying the order of the District Magistrate as the detenue is a habitual offender and argues that his acts are prejudicial to the public order, that he is a bootlegger who is selling adulterated liquor, the order impugned in the writ petition do not warrant any interference of this Court under Article 226 of the Constitution of India.

6. A perusal of the order passed by this Court in W.P.No.5469 of 2022 dated 11.07.2022 clearly demonstrates that the existence of element of disturbance to the public order is held to be a sine qua non for invoking the provisions of Section 3 of the Act 1 of 1986. The

said power, conferred on the authorities, is required to be exercised with lot of care, caution and circumspection and that same cannot be exercised in a routine and mechanical manner. In *Chittipothula China Muthyalu (W.P.No.5469 of 2022)*, this Court considering the rule position stated in *Ram Manohar Lohiya v. State of Bihar*<sup>1</sup>, *Piyush Kanthilal Mehatha v. Commissioner of Police Ahmadabad City*<sup>2</sup>, *Malladha K.Sriram v. State of Telangana*<sup>3</sup>, held that the satisfaction, as stipulated under Section 3 of the Act, should necessarily be a subjective satisfaction and is required to be on the basis of cogent and convincing material and not on the foundation of stale and sterile reasons. Recording of reasons for such satisfaction is also indispensable and imperative. So long as ordinary criminal law is adequate to deal with the offences, preventive detention without subjecting an individual to the procedure of free and fair trial would infringe the fundamental right to life and liberty guaranteed under Chapter III of Constitution of India. These factors are missing in the impugned order. The alleged offences are under the Prohibition laws only.

7. In the present case, even as per the impugned detention order the detainee was involved in five crimes, out of which charge sheet

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<sup>1</sup> AIR 1966 SC 740

<sup>2</sup> 1989 Supp (1) SCC 322.

<sup>3</sup> CrI.A.No.561 of 2022 (Supreme Court of India)

was laid in four crimes and undergoing trial. A perusal of the detention order and grounds of detention, would show the detaining authority as well sponsoring authority has not taken into consideration the said fact and no opinion has been expressed as to whether the preventive detention of detenue was essential or not, and no such discussion was made in the order.

8. The undisputed fact is that the detenue was granted bail in all the crimes. The further satisfaction that needs to be recorded that he will commit further crimes is not clear. It is merely reiterated that there is a likelihood of his committing similar offences. It is not clear how the authority came to such conclusion and that the ordinary law is not sufficient to stop the alleged crimes. The detention order did not expressively say anything about the need of ordering detention as well passing of confirmation orders.

9. Having regard to the facts of this case, this Court is of considered opinion that the order impugned was made without proper application of mind and there is a serious procedural violation. The detenue will not fall under the category of Section 3(2) r/w.3(1) of the Act and this Court could not find that the order of detention has any material to either substantiate or justify the said allegation that the detenue is a 'Bootlegger' whose activities would be actually prejudicial to public order.

10. For the reasons recorded, this Writ Petition is allowed, setting aside the order of detention passed by the 2<sup>nd</sup> respondent vide proceedings in Rc.No.893/MagI/2022, dated 01.10.2022 as confirmed by the State Government vide G.O.Rt.No.2558, General Administration (SC.I) Department, dated 28.11.2022. Consequently, the detainee namely Anagani Yedukondalu, S/o Ganapathi, Aged 47 years, is directed to be released forthwith by the respondents if the detainee is not required in any other cases. No order as to costs.

11. Miscellaneous petitions pending if any, stand closed.

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JUSTICE D.V.S.S.SOMAYAJULU

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JUSTICE V.SRINIVAS

Date: 28.04.2023  
Note: Issue C.C. today  
B/o.  
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