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Date : 24/08/2025

Chintham Harinadha Reddy Vs Government of Andhra Pradesh and Others

Court: Andhra Pradesh High Court

Date of Decision: Aug. 16, 2013

Citation: (2014) 1 ALD(Cri) 237 : (2014) 1 ALD(Cri) 1

Hon'ble Judges: K.C. Bhanu, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: T. Niranjan Reddy, for the Appellant;

Judgement

Challa Kodanda Ram, J.
The writ petition is filed by one Chintham Harinadha Reddy, S/o. Nagireddy, resident of Alimabad Street,

Rayachoty Town, YSR Kadapa District, who is the father of the detenu (Chintham Balaji Reddy), questioning the detention order dated 9.3.2013

passed by the 2nd respondent in exercise of the powers conferred on him under sub-section (2) of Section 3 of A.P. Prevention of Dangerous

Activities of Boot Legers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, ""the Act"")

issued in G.O. Rt. No. 5658, General Administration (Law and Order-II) Department dated 12.12.2012 and the same was ratified in G.O. Rt.

No. 1828 GA (Law and Order-II) Department, dated 24.4.2013 by the first respondent. Under the impugned order the son of the petitioner i.e.,

Chintham Balaji Reddy (for short, ""the detenu"") was directed to be detained in Central Prison, Cherlapally, Ranga Reddy District until further

orders in order to prevent the detenu from indulging in clandestine, clandestine and illegal activities prejudicial to the maintenance to the public

order. This order was further ratified by the 1st respondent by G.O. Rt. No. 1828 dated 24.4.2013 in exercise of the powers conferred on the 1st

respondent under Sections 12 and 13 of the Act, specifying the detention period as 12 months from the date of the detention i.e., 13.3.2013. In

the impugned detention order, it has been stated that the detenu who is aged about 35 years is a dreaded notorious red sanders wood smuggler

and was involved in 7 different cases relating to Forest Department and he had been evading or concealed his presence and involved in red

sanders wood smuggling clandestinely. (2) Penal laws have failed to curb his illegal activities, he has obtained bails in 3 different cases and trying to

obtain bails in 4 cases, where trials are pending out of 7 cases registered against him. If the detenu comes out from the prison on bail, he will

definitely indulge in prejudicial activity which is required by the preventive detention order. (3) Prevention detention is an anticipatory measure and

does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. It is further stated that the

detenu is indulging in creating terror amongst the people along with his henchmen creating law and order problem and he is involved in looting the

national wealth i.e., the red sanders which is an endemic timber and listed as endangered species in Red Data book of IUCN. Hence, he is a

goonda and unless he is detained under the Act he cannot be prevented from further indulging in illegal activities mentioned above and cannot be

controlled. In the grounds of detention which were supplied to the detenu had mentioned the offences in which he alleged to have been involved

directly or indirectly are mentioned in detail.

2. First of the offence which is mentioned as OR No. 61 of 2011 dated 27.9.2011. The offence was detected on 27.9.2011 in which the detenu

was arrayed as A2. Though the crime was registered on 27.9.2011, he was arrested only on 21.10.2011 on his voluntary surrender before the

Additional Judicial Magistrate of the First Class, Yellarapalli. Before his surrender on 21.10.2011 he was again alleged to have involved in Crime

No. 64 of 2011 dated 1.9.2011 of Lakkireddipalli Police Station and in this case the detenu was arrayed as A. 10. In this offence also he

surrendered before the Court on 21.10.2011. In both cases he was granted bail on 1.11.2011 and 2.11.2011. The 3rd case is OR No. 52 of

2012-13, the date of offence is 6.10.2012. Again he had surrendered before the Court of II Additional Judicial Magistrate of the First Class on

7.12.2012 and bail was granted on 11.12.2012. In other words in a matter of 4 days he was released on a bail. In earlier occasion, he was

granted bail in about 10 days. Offence in OR No. 147 of 2012-13 of Rayachoty range was alleged to have been committed on 30.1.2013 under

which the detenu was shown as A8. In OR No. 157 of 2012-13 was an offence alleged to have been committed on 14.2.2013 and the detenu

was shown as A27. In OR 200 of 2012-13 was an offence alleged to have been committed on 15.2.2013 whereunder the detenu was shown as

A5. Yet again OR No. 225 of 2012-13, was an offence alleged to have been committed on 28.2.2013 whereunder the detenu was shown as A1.

In OR No. 225 of 2012-13, he was arrested on 20.2.2013 and produced before the Magistrate and the Magistrate remanded the detenu to

judicial custody initially till 14.3.2013. A bail petition was moved in OR No. 225 of 2012-13 on 4.3.2013 and the same came to be dismissed on

7.3.2013. In crime OR Nos. 147, 157 and 200 of 2012-13, the detenu was produced before the Court through P.T. warrants. A close scrutiny of

the cases in which the detenu was alleged to have been involved is considered in the first 2 cases, detenu was granted bail in a short period of 10

days and in the 3rd case in a short period of 4 days. After granting of the bail on 11.12.2012, there were 4 cases whereunder the detenu was

alleged to have been involved. In other words notwithstanding the fact the detenu was detained in a case and even after his release he had not

chosen to conduct himself as a law abiding citizen without his getting involved in a crime and getting implicated. The freedom which has been given

under the bail order is alleged to have been misused. It may not be out of place to mention that in the first 3 cases, the detenu surrendered himself

before the Courts. In other words, the detenu repeatedly alleged to have been indulging in offences falling under Chapter XVI or Chapter XVII or

Chapter XXVII of the Indian Penal Code.

3. In the light of the above factual background, the learned Counsel Sri T. Niranjan Reddy, appearing on behalf of the detenu would urge before us

that the order of the detention is arbitrary, illegal and unsustainable and violative of the detenu''s rights guaranteed under the Article 21 of the

Constitution of India and in particular raises the following grounds:

(i) The offences alleged against the detenu are offences falling under violation of A.P. Forest Act, Sections 107, 378 and 379 read with 120(B)

IPC, A.P. Sandle Wood and Red Sander Wood Transit Rules, 1969, Sections 7, 55(2) and 58 of the Biological Diversity Act, 2002 and regular

prosecution under Penal Laws can deal with the cases of alleged violations and in that view of the matter invocation of the provisions of the Act is

totally unwarranted and illegal. The subjective satisfaction arrived at by the detaining authority is not based on objective criteria and inasmuch as

there is no satisfaction recorded that the detenu is likely to be released on bail and if he is released on bail he would continue to indulge in the

alleged activities.

(ii) The order of detention does not refer to the dismissal of the bail petition on 7.3.2013 and also the fact that the detenu has not even filed bail

petition with respect to alleged offences in OR Nos. 147, 157 and 200 of 2012-13 and in that view of the matter, there is total non consideration

of the material and non application of mind with respect to relevant factors.

(iii) The entire detention order only refers to that the detenu as has been absconding and habitually engaging in the alleged offences which cannot be

the reasons sufficient to justify the detenu''s detention under the draconic provisions of the Act depriving the detenu''s freedom without trial.

(iv) The detention order was passed on 9.3.2013 whereas the bail application was dismissed on 7.3.2013 and as such there is no satisfaction

recorded that the detenu is likely to obtain bail in the near future and as such the detenu is required to be detained to prevent the commission of

offences.

(v) The sponsoring authority did not place all the material before the detaining authority and in particular the dismissal of the bail order dated

7.3.2013 and as such the order of detention suffers from the vice of non-application of mind.

(vi) The offences alleged against the detenu do not fall under the meaning of ''goonda'' as defined under the Act and at best they may fall under

respective Forest Act. Further, there is no basis with respect to the alleged financing of the illegal activities of the detenu.

4. The learned Counsel had relied on the following judgments:

(a) Rameshwar Shaw Vs. District Magistrate, Burdwan and Another,

(b) K. Nageswara Naidu Vs. Collector and District Magistrate Kadapa, Y.S.R. District, A.P.,

(c) Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another,

(d) Munagala Yadamma Vs. State of A.P. and Others,

(e) Haradhan Saha Vs. The State of West Bengal and Others,

(f) Huidrom Konungjao Singh Vs. State of Manipur and Others,

(g) Unreported judgment of the Division Bench of this Court in WP No. 22174 of 2012 dated 28.9.2012.

5. In the counter-affidavit filed on behalf of the 2nd respondent the detaining authority, it has been categorically stated in Para No. 6 that the

detention order along with all the material in support of the detention order was served on the detenu and detenu was specifically informed that he

has a right to make representation to the detaining authority, Chief Secretary to Government and Advisory Board. This aspect of the counter has

not been denied by the petitioner by filing any reply. As a matter of fact, the detenu appeared to have availed the opportunity provided in the

statute to ventilate his grievance before the competent authorities. In Para No. 6 of the counter-affidavit of the 2nd respondent, it has been stated

that at the time of handing over the detenu at Central Prison, Cherlapally, R.R. District, the order of detention, grounds of detention and material

relied upon were served on the detenu in both the languages i.e., English and the vernacular language i.e., Telugu and the same was acknowledged

by him. It is submitted that the detenu was duly informed that he has a right to make representation to the Detaining Authority, Chief Secretary to

Government and Advisory Board. Thus, the constitutional and statutory mandate has been complied with. It is submitted that Government issued

G.O. Rt. No. 1265, General Administration (Law and Order II) Department, dated 15.3.2013, approving the order of detention; that the order of

detention passed against the detenu was placed before the Advisory Board in its meeting held on 16.4.2013. After hearing the detenu and the

Investigating Officer and after perusing the records, the Advisory Board opined that there is sufficient cause for the detention of the detenu Sri

Chintham Blaji Reddy, S/o. Harinatha Reddy, aged 35 years, R/o. Alimabad Street, Rayachoty Village, YSR District. Basing on the

recommendations of the Advisory Board, the Government issued G.O. Rt. No. 1828, General Administration (Law and Order II) Department,

dated 24.4.2013 order of detention for a period of 12 months from the date of his detention i.e., 13.3.2013.

6. Likewise, it has also been stated in Para Nos. 7 and 8 of the counter-affidavit of the 2nd respondent in reply to Para Nos. 6 to 9 of the

petitioner"s affidavit as follows:

7. In reply to Paras 5(i) and (vi), I submit that the penal statutory provisions under the Forest Act are not curbing the illegal activities of the Red

Sander offenders and the detenu entered into the Reserve Forest for committing the theft of heartwood of the forest which is endangered and

endemic species, though several crimes are registered under the penal statutory provisions, he is not mending his illegal activities. Hence, it

necessitated me to prevent him from further indulging into such offences by invoking the provisions of Act 1 of 1986. It is submitted that the Apex

Court and this Court in catena of cases of Red Sander Wood held that preventive laws can be invoked against the offenders of Red Sander

Wood. Hence, it cannot be said that the detention order is illegal and the same is liable to be set aside.

8. In reply to Paras 5(ii) and (iii), I submit that in OR No. 61/2001-12, and OR No. 115/2001-12, the detenu was arrested on 21.10.2011 and

on filing the bail application, he was granted bail on 2.11.2011 i.e., within a span of 10 to 12 days. Insofar as OR No. 52 of 2012-13 is

concerned, the detenu surrendered himself before the Magistrate on 7.12.2012 and he was granted bail on 11.12.2012 within a span of 4 days. I

submit that after he was being enlarged on bail in first crimes, he resorted to similar activities and therefore other crimes are registered against him. I

submit that insofar as OR Nos. 147, 157 and 200/2012-13 are concerned, he is an absconding accused. While so, in OR No. 225/2012-13

dated 28.2.2013, he was caught red-handedly and his arrest was effected while he was in possession of Red Sander Wood. I submit that in the

crimes, where the alleged detenu was absconding P.T. warrants were filed before the concerned Court and his arrest was effected on 6.3.2013.

While so, he filed bail application on 4.3.2013 in OR No. 225/2012-13 and it was dismissed on 7.3.2013. I submit that as the detenu was not

mending his activities and soon after his release, he is involving in similar offences, hence it necessitated me to pass the order of detention against

the detenu, hence it necessitated me to pass the order of detention against the detenu, while, he is in judicial custody, in order to prevent him from

further indulging into the theft of Red Sander Wood which is endangered and endemic species and heartwood of pristine forest by giving reasons.

7. There is no reply-affidavit filed on behalf of the petitioner denying these aspects. However, we are conscious of the fact that the validity of the

detention order has to be judged by taking into consideration of the detention order and the material accompanying the detention order and may

not rely on the counter-affidavit and the order has to be judged on its own merits.

8. A careful reading of the detention order and the grounds of accompanying detention order would reveal that the sponsoring authority was very

much aware of the fact that the bail petition was filed on 4.3.2013 and it was dismissed on 7.3.2013 in OR No. 225 of 2012-13 dated 28.2.2013.

At this stage, it may not be out of place to recall with respect to the offences under OR No. 147 of 2012-13 and OR No. 157 of 2012-13 and

OR No. 200 of 2012-13, the detenu was produced through Production Transit Warrant before the Courts. In other words, the authorities dealing

with the detenu were aware of and was conscious of the fact that the detenu was apprehended and is in the judicial custody. Inasmuch as the

detenu"s bail application in OR No. 225 of 2012-13 was dismissed only on 7.3.2013, it is obvious the detenu did not make an application seeking

bail in the other cases as in OR Nos. 147 and 157 of 2012, the detenu was shown as absconding and it is only on his being apprehended in OR

No. 225 of 2012-13 he could be produced before the criminal Court through P.T. Warrants. In the totality of the circumstances, it cannot be said

that the detaining authority was not conscious or not aware of the fact that the detenu was in custody and may not be released on bail in immediate

future. As can be seen from the record, the detenu was alleged to have been involved in 7 offences as on the date of detention. In the G.O. issued

u/s 3 of the Act confirming the initial detention, it has been recorded as under:

3. And whereas the Advisory Board constituted u/s 9 of the said Act, comprising of Sri Justice T.L.N. Reddy (Retired) Chairman and two other

Members, reviewed the case on 16.4.2013 and after having heard the detenu, who has been produced before them and the Investigating Officers

and after perusing the connected records, reported vide reference third read above, that in its opinion ""there is sufficient cause for the detention of

the detenu, Sri Chintham Balaji Reddy, S/o. Harinatha Reddy, aged 35 years, R/o. Alimabad Street, Rayachoty (V), YSR District.

4. Government after careful examination of the entire record, observe that the detenu, Sri Chintham Balaji Reddy, S/o. Harinatha Reddy, is found

to have been involved himself in as many as in 7 cases mentioned in the grounds of detention, for indulging in the illegal activities of felling red

sander trees and smuggling the timber to unknown places in India and abroad. The said activities are dangerous to forest wealth and prejudicial to

maintenance of public order apart from disturbing the peace, tranquility, social, harmony/order in the society and he became a source of potential

danger to the public. The said offences are registered under various provisions of the Forest Laws as well as Section 379 of IPC. The said

offences are punishable under Forest Act, as well as Chapter XVII of IPC, as such, the activities of the individual falls under and within the

meaning of ''Goonda'' as defined u/s 2(g) of Act 1 of 1986. All the incidents mentioned in the grounds of detention clearly substantiate as to how

the acts of the detenu are prejudicial to the maintenance of public order. In catena of decisions, the Courts held that any acts of attempt or illegal

cutting of the red sander trees and smuggling the timber, would certainly have its impact on the public order. The detaining authority having taken

into account and consideration of indulgence of the detenu in the above said activities repeatedly at regular intervals and having satisfied that the

penal laws have failed to curb his illegal activities, has passed the detention order against the detenu by invoking the provisions under the Act 1 of

1986, in order to prevent him from indulging further in such activities, which are prejudicial to maintenance of public order. The Advisory Board

after review of the case, has opined that there is sufficient cause for the detention of the detenu. As such, the detenu deserves the maximum period

of detention, as provided u/s 13 of the Act.

9. Now it is well settled by the various judgments of the Supreme Court that subjective-satisfaction of the detaining authority is non-justiciable

except in exceptional circumstances. In this context, it is opt to refer the judgment of the Supreme Court reported in Rameshwar Shaw v. District

Magistrate, Burdwan and another (supra), wherein it is held thus:

6. It is true that the satisfaction of the detaining authority to which Section 3(1)(a) refers is his subjective satisfaction, and so is not justiciable.

Therefore, it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority

can be justified by the application of objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him

do not necessarily or reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of

the satisfaction of the detaining authority cannot be questioned in a Court of law; the adequacy of the material on which the said satisfaction

purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by

Section 3(1)(a), vide The The State of Bombay Vs. Atma Ram Sridhar Vaidya,

7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i)

to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based

is open to challenge and the detention order liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they

would virtually deprive the detenu of his statutory right of making a representation, that again may introduce a serious infirmity in the order of his

detention. If however, the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered

u/s 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not

reasonably based on any of the said grounds.

8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority (1) Atma Ram Sridhar Vaidya''s

case (supra). 927 contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may

challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala

fides, the Court may also consider his grievance that the grounds served on him ''cannot possibly or rationally support the conclusion drawn against

him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable;

otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(a) cannot be questioned before the Courts.

9. It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person

is not detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the

evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of

the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from

acting in a prejudicial manner. That is why this Court has held in Ujagar Singh Vs. The State of The Punjab, that the past conduct or antecedent

history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies

or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of

public order.

10. If one takes into consideration of the detention order, the detaining authority had come to the definite conclusion based on the past conduct of

the detenu that normal penal proceedings have failed to curb the illegal activities of the detenu as in spite of the detenu being released on bail in 3

offences had once again resorted to commit 4 offences, it would go to show that the detenu is indulging in the alleged acts habitually. The definition

of ''Goonda'' may be noticed at this stage:

Section 2(g) ""goonda"" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or

abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXVII of the Indian Penal Code.

11. It has been repeatedly held by the Courts that the question about the validity of the satisfaction of the authority will have to be considered on

the facts of each case. In the present case, it also becomes important to examine the nature of activity the detenu alleged to have been involved.

The allegations levelled against the detenu are that he is destroying a unique and rare forest wealth by cutting red sanders trees. The loss and

destruction caused to the society cannot be restored back and irreparable damage is caused to the society and as it is common knowledge that a

tree would take 30 to 50 years to achieve maturity. In that view of the matter, it cannot be said that the conclusions arrived at by the detaining

authority that if the detenu is left free in the society, he would cause irreparable damage to the society by continuing to indulge in ''goonda'' activities

cannot be said either arbitrary or irrational, especially in the context of the nature of activities, the detenu was alleged to have been involved.

12. Coming to the sheet anchor arguments of Sri T. Niranjan Reddy, learned Counsel for the detenu that the detaining authority had not considered

the fact that the detenu was infact in the custody and had not applied for bait and especially his detention under the Act is necessitated; and further

detaining authority had also not stated that the detenu is likely to be released on bail. For this purpose he had relied the judgments referred to in

Para No. 7 above. Though this argument at first blush appears to be very attractive with regret to reject the same in the facts of the case. It may

not be out of place to recall that the detenu''s bail application was rejected on 7.3.2013 whereas he was produced before the criminal Court

through P.T. warrants in other cases on 6.3.2013 and the detention order came to be passed on 9.3.2013 and as a matter of fact detention was

sponsored by the lower authorities on 3.3.2013. In the face of the dismissal for bail on 7.3.2013, the detenu not applying for bail in other cases is

quite obvious and is only coincidental. In this context, it is useful to notice the law declared by the Supreme Court in a decision reported in

Rameshwar Shaw v. District Magistrate, Burdwan and another (supra), wherein it is held thus:

As abstract proposition of law, there may not be any doubt that Section 3(10)(a) does not preclude the authority from passing an order of

detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that

may make a difference in the application of the principle that a detention order can be passed against a person in jail.

13. In the same para, it was also held:

Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will

always have to be determined in the circumstances of each case.

14. It is also important to note at this stage that the detaining authority had categorically set out in G.O. that the detenu''s repeated illegal activities

at regular intervals could not be curbed by ordinary penal laws and in order prevent him from involving in further such activities, it has become

necessary to make the detention order under the Act. In our considered opinion, this is a categorical consideration of the facts of the case and the

reasons recorded by the detaining authority which does not fall under exceptions as set out by the Supreme Court in the judgment referred in

preceding paragraph.

15. It may be opt to quote the guidance given by the Hon''ble Sri Justice J. Chelameswar in opening paragraph of the judgment in Subhash

Popatlal Dave v. Union of India, Writ Petition (Crl.) No. 137 of 2011 while quoting Justice Jackson held:

The task of this Court to maintain a balance between liberty and authority is never done, because new conditions today upset the equilibriums of

yesterday. The seesaw between freedom and power makes up most of the history of Governments, which, as Bryce points out, on a long view

consists of repeating a painful cycle from anarchy to tyranny and back again. The Court''s day-to-day task is to reject as false, claims in the name

of civil liberty which, if granted, would paralyse or impair authority to defend existence of our society, and to reject as false claims in the name of

security which would undermine our freedoms and open the way to oppression.

----Justice Jackson in

American Communications Association, C.I.O. v. Charles T. Douds, (339 US 385) (94 Led 925 at 968).

In my opinion, it is a statement which every Judge of Constitutional Courts vested with the authority to adjudicate the legality of any state action

challenged on the ground that such action is inconsistent with civil liberties guaranteed under the Constitution must always keep in mind while

exercising such authority.

16. In the judgment of the Supreme Court reported in Khudiram Das Vs. The State of West Bengal and Others, , it is held thus:

The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of

precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from

doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent,

on suspicion or anticipation as distinct from proof.

(emphasis supplied)

17. For all the above reasons, we do not see any illegality in the detention order to exercise the extraordinary jurisdiction under Article 226 of the

Constitution of India. We do not have any quarrel with the proposition laid down in the judgments relied on by the learned Counsel for the

petitioner, but in the light of law laid down by the Supreme Court in a decision reported Rameshwar Shaw v. District Magistrate, Burdwan and

another (supra), the facts of each case would have to be judged. Accordingly, the writ petition is dismissed. No order as to costs. Miscellaneous

petitions, if any, pending in this writ petition shall stand closed.