(2008) 06 AP CK 0012

Andhra Pradesh High Court

Case No: Writ Petition No. 9036 of 2008

Shaik Subbalakshmi		APPELLANT
	Vs	
The Collector and District Magistrate, The Government of A.P. and The Superientendent, Central Prison		RESPONDENT

Date of Decision: June 24, 2008

Acts Referred:

- Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 - Section 2, 3(1), 3(2)
- Andhra Pradesh Prohibition Act, 1995 - Section 7A, 8
- Constitution of India, 1950 - Article 22(5), 226

Citation: (2008) 2 ALD(Cri) 359 : (2008) 6 ALT 57 : (2008) 3 APLJ 21

Hon'ble Judges: K.C. Bhanu, J; D.S.R. Varma, J

Bench: Division Bench

Advocate: D. Bhaskar Reddy, for the Appellant; The A.G., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.C. Bhanu, J.
This Writ Petition, under Article 226 of the Constitution of India, is filed to issue a writ of Habeas Corpus, directing the respondents to produce Shaik Sreenu, son of Yellaiah, who is detained in Central Prison, Warangal, before this Court, and to release him forthwith after declaring his detention as illegal and void.

2. The brief facts that are necessary for disposal of this Writ Petition may be stated as follows.

The petitioner herein is wife of Shaik Sreenu (hereinafter called as ''the detenu''), who is lodged in Central Prison, Warangal. By order dated 18.03.2008, which was subsequently amended on 19.3.2008, passed under Sections 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, 1986''), the first respondent ordered detention of the detenu on the ground that he was constantly indulging in bootlegging activities and his acts were prejudicial to the maintenance of public order through dangerous activities in connection with possession, sale and transportation of I.D. liquor, which are prohibited as per the provisions of the A.P. Prohibition Act, 1995 and A.P. Excise Act, 1968. The said order was approved by the Government in G.O. Rt. No. 1879, dated 27.3.2008 and the same was forwarded to the Advisory Board for review. The Board, having heard the detenu and the investigating officers, opined that there was sufficient cause for detention of the detenu, and so confirmed the detention order, vide G.O. Rt. No. 2235, dated 15.4.2008, with a direction to detain the detenu for a period of 12 months from the date of his detention. The said order of detention is now challenged on the ground that it is was passed without application of mind on vague, irrelevant and non-existent grounds which resulted in violation of the provisions of the Constitution of India.

3. The learned Counsel for the petitioner argued that the acts alleged against the detenu do not show that he was acting in the manner prejudicial to the maintenance of the public order, or that the acts do not in any manner affect the public order; that the order passed by the first respondent is without application of mind; that there was no mention in the impugned order with regard to grant of bail, which amounts to denial of right of detenu to make effective representation; that the reports of chemical examiner do not show that the I.D. liquor contained any harmful substance. Hence, he prayed to issue a writ of Habeas Corpus to produce and release the detenu.

4. On the other hand, the learned Counsel representing the Advocate General contended that the petitioner involved in storing, selling and transportation of illicitly distilled liquor containing sediment, which is injurious to health and unfit for human consumption; that the existing laws failed to have any desired impact on his clandestine, bootlegging activities and therefore the acts of the detenu are dangerous to public health and prejudicial to the maintenance of public order, and hence the impugned order has been passed by the Government; that after informing the detenu of his right to make a representation to the detaining authority as well as to the Government and also to the advisory board, and after following the statutory provisions, the impugned order was passed, and the said order does not suffer from any infirmities so as to call for interference by this Court. Hence, he prayed to dismiss the Writ Petition.

5. Both sides relied upon various decisions, which will be referred to at appropriate time.

6. It is well settled that preventive detention is resorted to, when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. Satisfaction of the detaining authority is considered to be of primary importance with great latitude in exercise of its discretion. The crucial question to be decided in this case is whether the alleged activities of the detenu are prejudicial to the public order which affect the community or public at large.

7. Basically the object of preventive detention is an anticipatory measure and does not relate to an offence. It is not punitive, but only a preventive. Preventive detention, being necessary, to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc.

8. The Apex Court drew a distinction between the ''public order'' and ''law and order'', in a decision in Commissioner of Police and Ors. v. C. Anita(2004) S C C 467, wherein it is held thus: (para No. 10).

"Public order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.

From the above, it is clear that distinction between law and order and public order lies not merely in the nature and quality of the acts but in the degree and extent of its breach upon the society.

9. Though several contentions have been raised by both the counsel in this Writ Petition, the main argument of the learned Counsel for the petitioner seems to be that copies of applications for bail and copies of orders granting bail, in three cases, have not been communicated to the detenu, which deprived valuable right of the detenu to make a representation to the Government as well as to the Advisory Board, and so, such an act on the part of the detaining authority is nothing but non-application of mind in passing the impugned order.

10. While passing the impugned order, in order to determine the conduct of the detenu, the detaining authority has gone through the following cases registered by the Prohibition & Excise Station, Madhira.

(i) COR No. 405/2007-08, dated 19.9.2007 on the allegation that the detenu found was in possession of 40 litres of I.D. liquor while he was transporting the same on scooter; (ii) COR No. 810/2007-08, dated 6.2.2008 alleging that on 6.2.2008 while excise police conducting route watch he was found in possession of 15 litres of I.D. liquor while transporting on scooter, (iii) COR No. 812/2007-08, dated 7.2.2008 on the allegation that he was in possession of 15 litres of I.D. liquor while transporting the same on 7.2.2008. Cases have been registered by the police for the offences under Sections 7(A) read with 8(e) of the A.P. Prohibition Act. In all these cases, samples have been sent to Chemical Examiner, Warangal. On analysis of the samples sent by the police, the Analyst opined that the samples contained illicitly distilled liquor containing sediment which is injurious to health and unfit for human consumption. Basing on the aforesaid 3 incidents, the detaining authority came to the conclusion that the prohibition laws failed to curb his illegal activities which are found to be dangerous to the public health and prejudicial to the maintenance of public order, and passed the impugned order.

11. In Abdul Sathar Ibrahim Manik v. Union of India and Ors. (1992) SCC 1, relied upon by the learned Counsel for the petitioner, the Apex Court set down certain conclusions, out of which two principles are relevant for the purpose of deciding this case, which read thus:

(1) ...

(2) ...

(3) ...

(4) Accordingly, the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu''s right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) ...

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

From the above decision, it is clear that non-supply of copies of the bail application and order refusing the bail, will not affect the right of the detenu when the detaining authority has not relied upon or referred to the same. It is also clear from

it that when the detenu was ordered to be released on bail and he was not in judicial custody at the time of passing of the detention order, then the detaining authority has to rely upon the contents of the bail application and the orders passed thereon, and that in such a case, the bail application and the orders granting bail, should be placed before the authority as well as copies thereof should be supplied to the detenu.

12. The learned Counsel representing the Advocate General relied on a decision in Sunila Jain Vs. Union of India (UOI) and Another, wherein it is held thus: (para 18)

The decisions of this Court referred to herein before must be read in their entirety. It is no doubt true that whether a detenu on the date of the passing of the order of detention was in custody or not, would be a relevant fact. It would also be a relevant fact that whether he is free on that date and if he is, whether he is subjected to certain conditions in pursuance of and in furtherance of the order of bail. If pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be relevant consideration for the purpose of passing an order of detention but the converse is not true. Some such other grounds raised in the application for bail and forming the basis of passing an order of bail may also be held to be relevant. It would, however, not be correct to contend that irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority and the copies thereof supplied to the detenu.

13. Basing on the above decision, it is contended that unless some restrictions are imposed in the order granting bail, it is not mandatory to place the same before the detaining authority, and consequently there is no need to supply those documents to the detenu.

14. There cannot be any dispute that all the documents placed before the detaining authority are not required to be supplied to the detenu, but only the relevant and vital documents are required to be supplied. Admittedly, copies of the bail applications and orders granting bail in the cases, have not been furnished to the detaining authority, and consequently, those documents have not been supplied to the detenu. Now, it has to be seen that on that ground, can it be said that the detention order was passed without application of mind and it led to denial of right of the detenu to make effective representation.

15. In Sunila Jain Vs. Union of India (UOI) and Another, case, it is observed, after referring to the Abdul Sathar Ibrahim Manik Vs. Union of India and others, , that application of mind to the averments made in the bail application may be relevant where the grounds stated therein reveal certain facts which have vital importance for passing of an order of detention. Therefore, in our considered opinion, copies of the bail application and orders passed by the concerned authority, are required to

be placed before the detaining authority, and to be supplied to the detenu, provided the bail application contains valuable information of vital importance, which are required to be taken into consideration by the detaining authority, and also bail orders contain any restrictions imposed by the concerned Magistrate.

16. Further, in Abdul Sathar Ibrahim Manik Vs. Union of India and others, , it is held that failure to supply each and every document merely referred to and not relied upon, will not amount to infringement of rights guaranteed under Article 22(5) of the Constitution of India. Therefore, from the above decisions, it is clear that whether bail applications and the bail orders are vital material for consideration by the detaining authority or not, has to be decided and determined basing on the facts and circumstances of each case.

17. In another decision in M. Ahamedkutty Vs. Union of India (UOI) and Another, , relied on by the learned Counsel for the petitioner, it is held that on the facts and circumstances of the case, copies of the bail application and bail order are vital material for consideration, and non-supply of which amount to denial of right of the detenu to make effective representation.

18. The learned Counsel for the petitioner relied on a decision of a Division Bench of this Court, in which one of us (D.S.R. Varma, J.) is a member, in Kallay Mutyallamma v. Collector & District Magistrate, East Godavari at Kakinada and Ors. 2008 (1) ALD (Crl.) 231 (AP), wherein it is held thus:

If we put it in a different way, if there is no apparent prejudice caused or likely to be caused to the detenu, there is no need for the detaining authority to supply such material on which he is passing the order of detention or referring such material; like the orders of bail in the order of detention.

19. The learned Counsel for the petitioner also relied on a decision in Lalitha v. State of A.P. and Anr. 2007 (2) ALD (Cri.) 181 (AP), wherein it is held as follows:

It is also pertinent to note that specific stand had been taken that the husband of the petitioner was arrested in the cases referred to supra and had been released on bail also and the charge-sheets also had been filed. It is also further stated that the husband of the petitioner having been released on bail and charge-sheets having been filed, these crucial aspects were not considered and the Sponsoring Authority had not placed the copies of the same along with the grounds of detention by virtue of which prejudice had been caused to the detenu in relation to making effective representation.

20. Therefore, from the above decisions and the foregoing discussion, it is clear that if non-supply of certain documents causes prejudice to the detenu in relation to making effective representation, then only furnishing those documents to the detaining authority as well as supply to the detenu is essential and mandatory. In the case on hand, nowhere in the affidavit accompanying the Writ Petition it is

stated in what manner and in what way non-supply of the copies of the bail applications and orders in the bail applications, caused prejudice to the detenu. Further, the bail applications are not shown to have contained any material facts, which may be taken into consideration for determination by the detaining authority. Similarly, it is not shown that some restrictions were imposed in the bail orders for release of the detenu. Therefore, in our considered opinion, in the facts and circumstances, non-supply of the documents which may not influence the question whether or not to make the detention order, need not be placed before the detaining authority and need not be considered by the detaining authority. In such a situation, we have no hesitation to hold that non-supply of the copies of the bail applications and orders passed by the concerned Magistrate thereon, may not be necessary so as to apply mind by the detaining authority, and so the impugned order cannot be said to be vitiated on this ground.

21. Coming to the facts of the case, in all the 3 cases, the detenu was found in possession of certain quantities of contraband. When the samples of those contrabands were analysed, each sample bottle was found containing sediment, which is dangerous to health and unfit for human consumption. Such is the case, it has to be inferred that if such illicitly distilled liquor is consumed, it causes grave or wide spread danger to human lives and public health. Therefore, it can be said that the acts of the detenu are prejudicial to the maintenance of the public order. After considering the material on record, the detaining authority passed the impugned order, which does not suffer from any infirmities so as to call for interference by this Court. Therefore, we do not find any merits in the Writ Petition and the same is liable to be dismissed. The Writ Petition is, accordingly, dismissed. No costs.