



HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO: 41112 OF 2018

Between:

1. Karanam Janaki W/o K. Srinivas,
Aged about 24 years
Resident of Door No. 48-9-15,
Sodalabbai Street, Rajendranagar,
Rajamahendravaram (Urban),
East Godavari District,
Andhra Pradesh.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh Represented by its Chief Secretary,
General Administration Department (Law and Order),
Secretariat Buildings , Velagapudi, Guntur District,
Andhra Pradesh.
2. The Collector and District Magistrate East Godavari District,
At Kakinada, Andhra Pradesh.
3. The Superintendent of Jails Central Prison, Rajamahendravaram, East
Godavari District, Andhra Pradesh.
4. The Superintendent of Police Kakinada,
East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): Y SUDHAKAR

Counsel for the Respondents: ADDL ADVOCATE GENERAL (AP)

The Court made the following: ORDER



2019:APHC:15379

**IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)**

WEDNESDAY, THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND NINETEEN

PRESENT

**THE HONOURABLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION NO: 41112 OF 2018

Between:

Karanam Janaki, W/o K. Srinivas, Aged about 24 years Resident of Door No. 48-9-15, Sodalabbai Street, Rajendranagar, Rajamahendravaram (Urban), East Godavari District, Andhra Pradesh.

...PETITIONER

AND

1. The State of Andhra Pradesh, Represented by its Chief Secretary, General Administration Department (Law and Order), Secretariat Buildings , Velagapudi, Guntur District, Andhra Pradesh.
2. The Collector and District Magistrate, East Godavari District, At Kakinada, Andhra Pradesh.
3. The Superintendent of Jails, Central Prison, Rajamahendravaram, East Godavari District, Andhra Pradesh.
4. The Superintendent of Police, Kakinada, East Godavari District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, direction or order more particularly one in the nature of WRIT OF HABEAS CORPUS directing the respondents to produce the Petitioners Husband Karanam Srinivas @ Vasu, S/o Venkata Ramana, aged about 28 years, Resident of Door No. 48-9-15, Sodalabbai Street, Rajendranagar, Rajamahendravaram (Urban), East Godavari District, who is now detained in Central Prison, Rajamahendravaram, East Godavari District, pursuant to the proceedings initiated by the 2nd respondent vide proceedings REV-CSECOPDL (PRC)/2/2018-SA(C1)-CLO-EG, dated 7.3.2018 as confirmed vide G.O. Rt. No. 1008, General Administration (SC.I) Department dated 9.5.2018 and consequently to release the detenu by declaring the impugned proceedings REV-CSECOPDL (PRC)/2/2018-SA(C1)-CLO-EG, dated 7.3.2018 of the 2nd respondent as confirmed vide G.O. Rt. No. 1008, General Administration (SC.I) Department dated 9.5.2018 by the 1st respondent as illegal, unjust, arbitrary, unconstitutional and in gross violation of fundamental rights guaranteed under Article 21 of the Constitution of India.

Counsel for the Petitioner:SRI. Y. SUDHAKAR

Counsel for the Respondents: ADDL. ADVOCATE GENERAL

The Court made the following: ORDER



THE HON'BLE THE ACTING CHIEF JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.41112 of 2018

ORDER: {Per the Hon'ble the Acting Chief Justice C. Praveen Kumar}

1. Vide order dated 7.3.2018, the Collector & District Magistrate, East Godavari District, Kakinada ordered the detention of Karanam Srinivas @ Vasu, S/o Ramana, R/o Rajendranagar, Rajamahendravaram, East Godavari District, under Section 3(2) r/w 3(1) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986), on the ground that he is a potential criminal as seen from his criminal history and is acting in a manner prejudicial to the maintenance of public order. The said order came to be challenged by Karanam Janaki, who is the wife of the above said detenu now detained in Central prison, Rajamahendravaram, East Godavari District.

2. As seen from the record, the order of detention, which came to be passed on 7.3.2018, was approved by the Government under Section 10 of the Act. Thereafter, the case of detenu was reviewed by the Advisory Board on 13.4.2018 opining that there is sufficient cause for detention of the detenu. After considering the report of the Advisory Board, the Government, in exercise of the powers conferred under sub-Section (1) of Section 12 r/w Section 13 of the said Act, confirmed the order of detention passed by the Collector, directing the detention of detenu be continued for a period of 12 months from the date of his detention i.e., 7.3.2018.

3. Heard.



4. The order of detention refers to eight incidents. The last incident referred to in the grounds was dated 21.3.2017, basing on which a case in Crime No.120 of 2017 was registered for the offence under Sections 384 and 506 r/w 34 IPC.

5. Relying upon the judgment rendered by the Hon'ble Supreme Court in **Lakshman Khatik Vs. State of West Bengal**¹ the learned Counsel for the petitioner would contend that there is a gap of 11 months between the last incident and the date of passing of the detention order and hence, the detention order is liable to be set aside. Relying upon the judgments in **Jagan Nath Biswas Vs. State of West Bengal**²; **Sk. Serajul Vs. State of West Bengal**³; **Ahamed Mohaideen Zabbar Vs. State of Tamil Nadu**⁴ and **Saeed Zakir Hussain Malik Vs. State of Maharashtra**⁵ and the judgment of the Division Bench of the High Court of Judicature for the State of Telangana and State of Andhra Pradesh in W.P.No.42192 of 2017 dated 27.2.2018, the learned Counsel for the petitioner would contend that since no proper explanation was offered by the 2nd respondent in passing the detention order after a long gap of 11 months from the date of last incident, the order of detention is liable to be set aside. The other ground raised by the learned Counsel for the petitioner is that even a plain reading of the order of detention and also the grounds of detention would reflect that the order under challenge came to be passed with a view to maintain law and order effectively.

¹ (1974) 4 SCC 1

² (1975) 4 SCC 115

³ AIR 1975 SC 1517

⁴ (1999) 4 SCC 417

⁵ (2012) 8 SCC 233



6. On the other hand, the learned Additional Advocate General would contend that the order under challenge came to be passed taking into consideration the holistic approach of the matter and with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. While admitting that the last incident was on 21.3.2017, he would contend that if the alleged detenu is not detained, he would have continued with his activities thereby disturbing the even tempo of life of the residents of that area.

7. The issue relating to long and unexplained delay between the date of registration of the last crime and the date of passing the detention order, came for consideration before the Supreme Court on more than one occasion.

(i) In **Lakshman Khatik** (1 supra), the Supreme Court held as under:

"5. All the three grounds on which the District Magistrate purports to have reached the required satisfaction are based on incidents which took place in rapid succession in the month of August, 1971. The first incident of unloading 5 bags of rice took place in the afternoon of 3-8-1971. The second incident took place on 5-8-1971 also in the afternoon practically at the same place as the first incident. This time also some rice was removed from the trucks carrying rice. The third incident took place in the afternoon of 20-8-1971 also at the same place. That also related to the removal of some rice from loaded trucks. It is not clear from the record whether the petitioner was prosecuted for the theft, especially, when it is seen that the first incident of removal of rice was witnessed by two constables. However that might be, it appears to us that the District Magistrate could not have been possibly satisfied about the need for detention on 22-3-1972 having regard to the detenu's conduct some 7 months earlier. Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7



months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place. In our opinion the order of detention is invalid.”

(ii) In **Jagan Nath Biswas** (2nd supra), the Supreme Court held as under:

“2. The incidents themselves look rather serious but also state, having regard to the long gap between the occurrences and the order of detention. One should have expected some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction. In the present case, counsel for the State, Shri G.S. Chatterjee, took time to furnish an explanation as to why there was such a long delay for the District Magistrate to pass the order of detention. Unfortunately, we are no wiser to-day than at the previous hearing. In short, we are not taken into confidence by the District Magistrate as to why there should have been such an inordinate delay. We, in turn therefore, are not satisfied about the bona fides of the subjective satisfaction of the District Magistrate.”

(iii) In **Sk. Serajul** (3 supra), the Supreme Court held as under:

“.....There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the Subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate



of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine. But here we find that though an affidavit in reply to the petition was filed by the Deputy Secretary Home (Special) Department, Government of West Bengal, no explanation was forthcoming in this affidavit as to why the order of detention was made as late as 24th August, 1972 when the last incident on which it was founded occurred on 15th January, 1972 and why the petitioner was not arrested until 22nd February, 1973. though the order of detention was made on 24th August, 1972....”

(iv) In **Ahamed Mohaideen Zabbar** (4 supra) and **Saeed Zakir Hussain Malik** (5 supra), the Supreme Court set aside the detention orders on the grounds of unexplained/unsatisfactory explanation of the delay between the prejudicial activities and the date of passing of the detention orders.

8. Following the aforesaid judgments, a Division Bench of the composite High Court for the States of Telangana and Andhra Pradesh, by order dated 27.02.2018 passed in W.P.No.42192 of 2017, has set aside the order of detention challenged therein, on the ground



of long and unexplained gap between the date of registration of last crime and the date of passing of the detention order.

9. From the judgments referred to above, it is very clear that merely because there is delay in passing the detention order, there cannot be an irresistible conclusion that the detention order is improper. It depends on the facts and circumstances of the case and the reasons given by the authorities for passing the detention order. In the instant case, as observed by us earlier, there is delay of about 11 ½ months between the date of registration of the last criminal case and the date of passing of the detention order. No substantial reason is given in the grounds of the order explaining the delay in passing the detention order. However, it is stated in the counter that though the last crime was on 21.3.2017, the detention order was passed on 7.3.2018 i.e., after a delay of about 11 ½ months and that a holistic approach is to be taken in determining the delay aspect. We are afraid that such an explanation cannot be accepted, where personal liberty of the individual is involved.

10. Coming to the second ground, it is no doubt true that in the last paragraph, it is stated that the detention order came to be passed with a view to maintain public order, but at the same time, the preceding paragraphs in the order reads as under:

“Thus, the said Karanam Srinivas @ Vasu S/o Ramana aged 28 years, Rajamahendravaram is a potential criminal as seen from his criminal history. He is acting prejudicial to the public order. He has no respect towards law and is relapsing to recidivism creating panic in the minds of general public.

In order to maintain Law and Order effectively with an iron hand and to keep peaceful atmosphere and ensure peaceful existence of the people in Urban Police District, there is no other go except to book Karanam Srinivas @ Vasu S/o Ramana as detenu under Section 2 (G) of the A.P. Prevention Of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986”.



11. From the two paragraphs referred to above, it is clear that to maintain law and order effectively and to maintain peaceful existence of people, the order of detention came to be passed under Section 2 (g) of the Act. Even though the last paragraph of the detention order states that the order came to be passed so as to prevent the detenu from acting in a manner prejudicial to the maintenance of public order, but it is contrary to the contents of the earlier paragraphs, wherein it was observed that in order to maintain law and order effectively, the detention order came to be passed. It is well established proposition of law that in order to overcome the law and order problem, the authorities cannot and should not invoke the Preventive Detention Laws. Time and again, the apex Court made a distinction between the law and order and public order. The issue as regards satisfaction arrived at on grounds of 'public order' and 'public peace and law and order' and its consequences, came up for consideration before a Division Bench of the composite High Court for the States of Telangana and Andhra Pradesh in **Vasanthu Sumalatha v. State of Andhra Pradesh**⁶, wherein, the Division Bench, having dealt with the expressions 'public order' and 'law and order' in detail and having referred to the judgments of the Supreme Court in **Commissioner of Police v. C.Anita** [(2004) 7 SCC 467], **Kuso Sah v. State of Bihar** [(1974) 1 SCC 185], **Harpreet Kaur v. State of Maharashtra** [(1992) 2 SCC 177], **T.K.Gopal v. State of Karnataka** [(2000) 6 SCC 168], **State of Maharashtra v. Mohd. Yakub** [(1980) 3 SCC 57], **Ram Manohar Lohia v. The State of Bihar** (AIR 1966 SC 740), held as follows:

⁶ 2016 (1) ALT 738 (D.B.)

“The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to “public peace” and “law and order” neither of which are grounds for detaining a citizen, in preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds of detention are read together, the fact, that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of “public order” and in the grounds of detention, as affecting “public peace” and “law and order”, reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of “public order” or “public peace and law and order”. As noted hereinabove, “public order” has acquired a meaning distinct from “law and order” and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to “public peace and law and order”, his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention.”

In view of the above judgment and having regard to the fact that the detaining authority categorically stated that the order came to be passed so as to maintain law and order effectively, we feel that the impugned detention order is liable to be set aside.

12. The Writ Petition is allowed, setting aside the order dated 7.3.2018 passed by the Collector & District Magistrate, East Godavari, Kakinada, detaining Karanam Srinivas @ Vasu, S/o Ramana, R/o Rajendranagar, Rajamahendravaram, East Godavari District, under Section 3(2) r/w 3(1) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral



Traffic Offenders and Land Grabbers Act (Act 1 of 1986), and consequently, the detenu, Karanam Srinivas @ Vasu, S/o Ramana, R/o Rajendranagar, Rajamahendravaram, East Godavari District, shall be set at liberty forthwith, if not required in any other case or crime.

Sd/- M.A. SUBHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Secretary, General Administration Department (Law and Order), State of Andhra Pradesh, Secretariat Buildings , Velagapudi, Guntur District, Andhra Pradesh.
2. The Collector and District Magistrate, East Godavari District, At Kakinada, Andhra Pradesh.
3. The Superintendent of Jails, Central Prison, Rajamahendravaram, East Godavari District, Andhra Pradesh.
4. The Superintendent of Police, Kakinada, East Godavari District.
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PM



2019:APHC:15379



2019:APHC:15379

HIGH COURT

DATED:13/02/2019

ORDER

WP.No.41112 of 2018

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(10)

Allowing the WP

Without costs.

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12 28/3/2019.