



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE NINETEENTH 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: 47074 OF 2018

Between:

1. Smt. Guduru Pakkiramamma W/o. Sanjeeva Rayudu alias Musalaiah,
Aged about 30 years,
R/o. 2-663a, Ahobilam, Ahobilam,
Kurnool, Andhra Pradesh.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh represented by its Chief Secretary,
Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Collector and District Magistrate Kurnool, Kurnool District.
3. The Superintendent Central Prison, Kadapa,
YSR Kadapa District.

...RESPONDENTS

Counsel for the Petitioner(s): T NAGARJUNA REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL (AP)

The Court made the following: ORDER

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

TUESDAY, THE NINETEENTH 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: 47074 OF 2018

Between:

Smt. Guduru Pakkiramamma, W/o. Sanjeeva Rayudu alias Musalaiah, Aged about 30 years, R/o. 2-663a, Ahobilam, Ahobilam, Kurnool, Andhra Pradesh.

...PETITIONER

AND

1. The State of Andhra Pradesh, represented by its Chief Secretary, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Collector and District Magistrate, Kurnool, Kurnool District.
3. The Superintendent, Central Prison, Kadapa, YSR Kadapa 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 "For all the reasons stated above, it is just and necessary that this Hon'ble Court may be pleased to issue a writ of Habeas Corpus under Article 226 of the Constitution of India directing the Respondents herein to produce the body of Sanjeeva Rayudu @ Musalaiah, S/o Late Pedda Sanjanna, (Detenue), aged about 45 years, R/o 2-663a, Ahobilam, Ahobilam, Kurnool, who is now lodged in Central prison, Kadapa YSR Kadapa District before this Hon'ble Court and he may be ordered to be released/set as liberty forthwith by declaring the Order of Detention passed by the 2nd Respondent vide Rc.C1/952/M/2018, dated 28.11.2018 as confirmed by the 1st Respondent in G.O.Rt.No.16, General Administration (SC.I) Department, dated 02.01.2019, after receiving the report of the Advisory Board on 20.12.2018, as illegal, a arbitrary, void and unconstitutional.

(Prayer amended as per C.O. dt. 19/02/2019 in I.A.No. 1/2019.)

Counsel for the Petitioner: SRI. T NAGARJUNA REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following: ORDER



**HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION No.47074 of 2018

ORDER: (Per Hon'ble The Acting Chief Justice C.Praveen Kumar)

The husband of the petitioner, by name Guduru Sanjeeva Rayudu @ Musalaiah S/o. Late Pedda Sanjanna, was subjected to preventive detention under Section 3(2) read with 3(1) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act'), under order dated 28.11.2018 of the Collector & District Magistrate, Kurnool District. His detention was approved by the Government vide G.O.Rt.No.2554, General Administration (SC.I.) Department, dated 06.12.2018. Aggrieved thereby, the petitioner filed the present writ petition seeking issuance of a writ of habeas corpus directing the respondents to release the detenu, who is now lodged in Central Prison, Kadapa, by declaring the detention order dated 28.11.2018 and the consequential G.O.Rt.No.2555 dated 06.12.2018 as illegal, arbitrary and unconstitutional.

The record reflects that after the approval of the order of detention by the Government, the matter was referred to the Advisory Board under Section 10 of the Act. Thereupon, the Advisory Board reviewed the matter and submitted a report to the Government on 20.12.2018, under Section 11(1) of the Act, opining that there was sufficient cause for the detention of the detenu. After consideration of the said report, the Government confirmed the detention of the petitioner's husband and directed that his detention shall be continued for a period of 12 months from the date of his



detention, i.e., 30.11.2018, *vide* G.O.Rt.No.16, General Administration (SC.I) Department, dated 02.01.2019.

Since the confirmation was made during the pendency of the writ petition, the petitioner, by way of filing an amendment application, also laid a challenge to the confirmation G.O.

The order of detention refers to twelve crimes in which the detenu was alleged to have been involved. Out of them, five crimes were registered for the offences punishable under the Indian Penal Code and the remaining seven crimes were registered for the offences punishable under the Criminal Procedure Code. The detenu was acquitted in the cases registered for the offences under the Indian Penal Code and insofar as the offences under the Code of Criminal Procedure, he was bound over by the concerned authority. In the year 2018, a rowdy sheet has been opened against the detenu on the file of Allagadda Rural Police Station on account of his notorious and hazardous activities. Having referred to the twelve crimes registered against the detenu, the detaining authority observed that the detenu has been motivating innocent youth towards committing of both property and bodily offences and due to his motivation, the common youth of Ahobilam, Allagadda and surrounding villages were involved in several offences and that the detenu, by maintaining a gang and operating in the commission of offences armed with deadly weapons, has been causing breach of public peace and tranquillity. The detenu and his henchmen have been damaging the public property and thereby, exhibiting highhanded behaviour in the areas, affecting the public order. Thus, the detaining authority held that the detenu falls within the meaning of word 'Goonda' as defined under the Act and accordingly, passed the order of detention under challenge.



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A counter-affidavit came to be filed by the 2nd respondent-Collector & District Magistrate, Kurnool, denying the averments made in the writ affidavit and supporting the order of detention.

Though various grounds are urged in the affidavit filed in support of the writ petition, Sri T.Niranjan Reddy, learned senior counsel appearing for the petitioner, would mainly contend that the order of detention came to be passed by the detaining authority in a confused state of mind and on stale grounds. To substantiate his contention, he has drawn the attention of this Court to the relevant portions of the order of detention and grounds of detention and pointed out that the detaining authority was not in a position to make up his mind as to whether the detention of the detenu is required in order to maintain 'law and order' or 'public order'. He further submits that the order of detention was based on stale incidents and therefore, it cannot be sustained.

On the other hand, the learned Special Government Pleader representing the learned Advocate General would submit that even if it is presumed, but not admitting, that the detaining authority was in a state of confusion as to whether the detention of the detenu is required on account of 'law and order' issue or to maintain 'public order', there is other material before the detaining authority, which is sufficient to show that the detention of the detenu is not illegal. He would further contend that if the detenu was not detained, he would have continued with his activities thereby disturbing the even tempo of life of the people.

It is to be noted that in the order of detention, the detaining authority, having referred to twelve crimes registered against the detenu, observed that the provisions of IPC and CrPC are found insufficient in ordinary course to deal with the detenu since he is a habitual offender

indulging repeatedly in dangerous "Goonda" activities adversely affecting public order and therefore, he would fall under the definition of "Goonda" under Section 2(G) of the Act, however, in the grounds of detention, which were supplied to the detenu, the detaining authority observed as follows:

"Thus, the said Guduru Sanjeeva Rayudu @ Musalaiah, S/o late Pedda Sanjanna, Age 45 yrs 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.

Hence, on the basis of the record placed before me, I am satisfied that you should be detained under A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND 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 the limits of Allagadda Rural PS and Allagadda Town PS of Kurnool District, there is no other go to go except to book Guduru Sanjeeva Rayudu @ Musalaiah, S/o late Pedda Sanjanna, Age 45 yrs as detenu UNDER SECTION 2(G) OF THE A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986.

It is therefore, ordered that you shall be detained under section 2(g) of A.P. PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986 (Act 1 of 1986). To prevent you from acting in a manner prejudicial to the maintenance of public order."

As can be seen from the above observations, it is clear that the detaining authority was not in a position to make up his mind as to whether the activities of the detenu are affecting 'public order' or 'law and order'. Though, in the first and last paragraphs extracted above, the detaining authority held that the detenu has been acting prejudicial to the maintenance of public order and his detention was ordered to prevent him



from acting in a manner prejudicial to the maintenance of public order, in the second paragraph, he said that the detenu should be detained under the Act in order to maintain 'law and order' and to keep peaceful atmosphere and ensure peaceful existence of the people. Thus, the order of detention lacks clarity as to whether on the ground of 'public order' or 'law and order', the detention of the detenu was necessitated. Further, though the detaining authority stated that the detenu is acting prejudicial to the public order, except citing stale incidents, such as, the detenu motivating innocent youth towards committing of both property and bodily offences and by maintaining a gang, operating in the commission of offences armed with deadly weapons, causing breach of public peace and tranquillity, the order of detention and the grounds of detention do not reveal relevant and justifiable grounds for ordering the detention of the detenu in order to maintain 'public order'. In the absence of a positive conclusion that the activities of the detenu are prejudicial to 'public order', preventive detention laws cannot be made applicable to 'law and order' issues.

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**¹, 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**

¹ 2016 (1) ALT 738 (D.B.)



**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:**

"71. 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 the light of the aforesaid judgment and having regard to the fact that the grounds of detention and the order of detention reveal confused state of mind of the detaining authority and lack of clarity of thought in satisfying himself whether the detention should be on the ground of 'public order' or 'law and order', and since the detaining authority is not empowered to order detention of a citizen on the ground that his activities are prejudicial to 'law and order', as noted earlier, we are of the considered opinion that his subject satisfaction came to be based on extraneous and



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irrelevant considerations, thereby invalidating the order of detention under challenge.

For the foregoing discussion, this Court is of the considered opinion that the order of detention under challenge, which was consequently approved and confirmed by the Government, cannot be sustained and is liable to be set aside.

In the result, the writ petition is allowed by setting aside the order of detention dated 28.11.2018 passed by the Collector & District Magistrate, Kurnool District, approved under G.O.Rt.No.2554, General Administration (SC.I) Department, dated 06.12.2018 and further confirmed under G.O.Rt.No.16, General Administration (SC.I) Department, dated 02.01.2019. The husband of the petitioner, by name Guduru Sanjeeva Rayudu @ Musalaiah S/o. Late Pedda Sanjanna, shall be set at liberty forthwith unless his confinement is required in relation to any other case.

As a sequel, pending miscellaneous petitions if any, shall stand closed. No order as to costs.

//TRUE COPY//

Sd/- K. MURALI
ASSISTANT REGISTRAR

SECTION OFFICER

**One Fair Copy to the Hon'ble the Acting Chief Justice C. PRAVEEN KUMAR
(For His Lordships Kind Perusal)**

**One Fair Copy to the Hon'ble Sri. Justice M. SATYANARAYANA MURTHY
(For His Lordships Kind Perusal)**

To,

1. The Chief Secretary, State of Andhra Pradesh, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Collector and District Magistrate, Kurnool, Kurnool District.
3. The Superintendent, Central Prison, Kadapa, YSR Kadapa District.
4. 9 LR Copies
5. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Advocate Association Library, High Court of Andhra Pradesh.
7. One CC to Sri. T. Nagarjuna Reddy, Advocate (OPUC)
8. Two CCs to the Advocate General, High Court of Andhra Pradesh. (OUT)
9. Two CD Copies.

PM



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HIGH COURT

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DATED:19/02/2019

OC
25/19

ORDER

WP.No.47074 of 2018

Rs. 12:00
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Allowing the WP

Without costs.

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