

Andhra Pradesh High Court - Amravati

Pedda Matangi Mounika vs The State Of Ap on 12 May, 2023

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

THE HON'BLE SRI JUSTICE V.SRINIVAS

WRIT PETITION No.36968 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 Peddamathangi Bramhaiah @ Bramaiah @ Gummagadu, S/o.Naganna, aged 30 years, vide Rc.C1/909/M/2022, dated 07.09.2022 passed by the 2nd respondent-The Collector & District Magistrate, Nandyal District

as confirmed by the 1st respondent-the State as per G.O.Rt.No.2304, General Administration (SC.I) Department, dated 01.11.2022 and prays to direct the respondent authorities to set the detenu at liberty forthwith.

2. The Collector and District Magistrate, Nandyal District, while categorizing the detenu as "Goonda" within the definition of 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 (for short, 'the Act of 1986') passed the impugned order of detention.

3. Heard Sri T.Ashok Srivastava, 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. It is submitted by the learned counsel for the petitioner that total twenty-seven crimes were registered against the detenu, out of which ten crimes were ended in acquittal, two crimes settled before lok-adalat, four crimes are bound over cases, convicted in one crime and ten crimes are at the stage of investigation and pending for trial. He further submits that the order of detention passed in violation of Article 21 of the Constitution of India, without any material. He relied upon judgments of Apex Court reported in Sama Aruna v. State of Telangana<sup>1</sup>, Champion R.Sangma v. State of Meghalaya<sup>2</sup>, Dharmendra Suganchand Chelawat and others v. Union of India<sup>3</sup>, Rekha v. State of Tamilnadu<sup>4</sup>, Kulvinder Singh v. State of Haryana<sup>5</sup> and judgments of this Court in Gattu Kavita v. State of Telangana<sup>6</sup> and W.P.No.30649 of 2022, dated 06.03.2023.

5. It is brought to the notice of this Court by the learned counsel for the writ petitioner that the issue in the present Writ Petition is squarely covered by the order of this Court in 1 2018 (2) SCC 150 2 2015 (16) SCC 253 3 1990 (1) SCC 746 4 2011 (5) SCC 244 5 2011 (5) SCC 258 6 2016 SCC Online Hyd 718 W.P.No.30649 of 2022, dated 06.03.2023. A copy of the said order is placed on record.

6. On the other hand, reiterating the averments made in the counter affidavit filed by the respondents, it is submitted by Sri Syed Khader Mastan, learned counsel attached to the office of Additional Advocate General that having regard to the gravity of the offences, the orders impugned in the Writ Petition do not warrants any interference of this Court under Article 226 of the Constitution of India.

7. A perusal of the order dated 06.03.2023 passed by this Court in W.P.No.30649 of 2022 clearly demonstrates that all the issues that have been raised in the present Writ Petition were also raised in the aforesaid Writ Petition and this Court discussed the law laid down in Gattu Kavitha case and Rushikesh Thanaji Bhoite v. State of Maharashtra<sup>7</sup> case and three judge Bench judgment of Apex Court in Rekha v. State of Tamilnadu<sup>8</sup> case, in which the Apex Court held as follows:

"The detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority passed the detention order under the impression that no 7 (2012) 2 SCC 72 8 2011 (5) SCC 244 bail application of the accused was pending, but in similar cases bail had been granted by the courts. We have already stated above that no details of alleged similar cases have been given. Hence, the detention order in question cannot be sustained".

8. 11. In Syed Sabeena v. The State of Telangana and others<sup>9</sup> at Para No.17 it is held by the APEX Court that: "in any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case."

9. Recently, the Hon'ble Supreme Court in Pramod Singla v. Union of India and Others<sup>10</sup>, held at Para No.48 as follows :

48. As has been mentioned above, preventive detention laws in India are a colonial legacy, and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. In such a circumstance, where there is a possibility of an unfettered discretion of power by the Government, this Court must analyze cases arising from such laws with extreme caution and excruciating detail, to ensure that there are checks and balances on the power of the 9 CrI.A.No.909 of 2022 (SLP(CrI).No.4283 of 2022) (Supreme Court of India) 10 2023 SCC Online SC 374 Government. Every procedural rigidity must be followed in entirety by the Government in cases of preventive detention, and every lapse in procedure must give rise to a benefit to the case of the detenu. The Courts, in circumstances of preventive detention, are conferred with the duty that has been given the utmost importance by the Constitution, which is the protection of individual and civil liberties. This act of protecting civil liberties, is not just the saving of rights of individuals in person and the society at large, but is also an act of preserving our Constitutional ethos, which is a product of a series of struggles against the arbitrary power of the British state.

10. In the present case also it is found there are lapses of procedure and that as per the Pramod Singla case (referred to above) every lapse in procedure must give rise to a benefit to the case of the detenu. In this case there is a lapse found while ordering detention and also confirming the same, resulting in the finding that the order itself is not good as per law. Further the detenu will not fall under the category of Section 2(g) of the Act as passing of order of preventive detention is on stale and non-existing grounds. There is no proximity or live link between any of the grounds which were taken as a basis for passing the order of preventive detention by the respondents.

11. In the light of the above pronouncements by both the Apex Court and this Court, this Court holds that the order of detention is not based on any material to either substantiate or justify the allegation that the detenu is a 'Goonda'. More so, it has been specifically admitted and mentioned that in the seventy-seven cases which were taken for consideration, in ten cases the detenu was acquitted, two cases were settled before lok-adalat and four cases are bound over cases. In addition when we perused the detention order and grounds of detention, there was no reference about the granting of bails in the concerned crimes. Thus, it is obvious that the Sponsoring Authority has not placed the relevant material i.e., bail orders were not placed before the Detaining Authority and there was no effective consideration of this fact. His likelihood of committing crimes after release is also not properly considered. It is clear that the penal laws are sufficient to deal with the situation mentioned in the order of detention and that invoking provisions of preventive detention is completely unnecessary as settled by this Court in several judgments.

12. Moreover, on perusal of order, it does not contain the involvement of detenu in the crimes alleged to have been participated by him to show it will effect or likely to affect adversely affect public order or danger to the public life or health. The same is conspicuously silent in the orders passed by the sponsoring authority. In view of the same the order becomes contrary to law and unconstitutional.

13. For the above mentioned reasons as recorded, this Writ Petition is allowed setting aside the order of detention passed by the 2nd respondent vide proceedings in Rc.C1/909/M/2022, dated 07.09.2022 as confirmed by the State Government vide G.O.Rt.No.2304, General Administration (SC.I) Department, dated 01.11.2022. Consequently, the detenu namely Peddamathangi Bramhaiah @ Brammaiah @ Gummagadu, S/o.Naganna, aged 30 years, is directed to be released forthwith by the respondents if the detenu is not required in any other cases. No order as to costs.

14. Miscellaneous petitions pending if any, stand closed.

----- JUSTICE D.V.S.S.SOMAYAJULU  
----- JUSTICE V.SRINIVAS Date: 12.05.2023 Note: Issue C.C. today  
B/o.

Krs THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU AND THE HON'BLE SRI JUSTICE V.SRINIVAS WRIT PETITION No.36968 of 2022 DATE: 12.05.2023 krs