

# **Nukala Subhashini, vs The State Of Andhra Pradesh, on 7 May, 2021**

**Author: C. Praveen Kumar**

**Bench: Arup Kumar Goswami, C.Praveen Kumar**

HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE Mr. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE  
&  
HON'BLE Mr. JUSTICE C.PRAVEEN KUMAR

W.P. No.17728 of 2020

(Through video conferencing)

Nukala Subhashini, W/o Nukala Manohar,  
Aged 33 years, R/o H.No.1-180, Koilakuntla  
Village & Mandal, Kurnool District, Andhra  
Pradesh-518134.

.. Petitioner

Versus

The State of Andhra Pradesh, rep. by its Chief  
Secretary, General Administration Department,  
A.P. Secretariat Building, Velagapudi,  
Amaravathi, Guntur District & 3 Others.

.. Respondents

Counsel for the Petitioner : Mr. D.Purnachandra Reddy

Counsel for Respondents : Mr. Yugandhar Reddy,  
representing Additional  
Advocate General No.1

ORDER

Dt : 07.05.2021 (per C. Praveen Kumar, J.) ORDER :

1. This petition, in the nature of Writ of Habeas Corpus, was filed by the wife of the detenu, viz., Nukala Manohar Rao, son of N.Krishna Murthy, who is lodged in Central Prison, Kadapa, praying for release and to set him free, after declaring his

detention under Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic offenders and Land Grabbers Act, 1986 (for short, 'the Act'), as unconstitutional and illegal.

2. By an order dated 07.08.2020, the Collector & District Magistrate, Kurnool, passed the order of detention under Section 3(2) read with Section 3 (1) of Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goonda, Immoral Traffic Offenders and Land Grabbers Act, 1986, on the ground that he is a bootlegger within the meaning of the Act and that he is constantly involved in bootlegging activities in Allagadda and Ahobilam Areas of Kurnool District City and became dangerous to the lonely public in purview of A.P. Prohibition Act, 1995. The said order of detention was accorded approval by the 1st Respondent vide G.O.Rt. No.1517, on 01.10.2020, confirming the detention of the detenu for a period of 12 months from the date of his detention i.e., 09.08.2020, pursuant to the review and report, dated 18.09.2020, submitted by the Advisory Board.

3. The grounds of detention served on the detenu refer to 14 incidents. Out of 14 incidents referred to in the grounds, except incident Nos.11, 12 & 14, which were registered for the offences punishable under Sections 188, 273 I.P.C., Section 20(2) of the Cigarette and Other Tobacco Products Act, 2003 and Sections 26, 30 of Food Safety and Standard Act of Koilakuntla P.S.; Sections 188, 273 I.P.C., Section 20(b) of NDPS Act 1985 and Section 20(2) of COTP Act of Koilakuntla P.S.; and Sections 188, 273, 328 read with Section 34 I.P.C. and Section 20(2) of the Cigarette and Other Tobacco Products Act, 2003 and Sections 26, 30 of Food Safety and Standard Act of Koilakuntla P.S. respectively, all other cases were registered against the detenu, for the offences punishable under Sections 188, 273, 328 I.P.C. and the provisions of Food Safety and Standard Act 2006.

4. Sri D.Purnachandra Reddy, learned counsel for the petitioner, mainly submits that the order of detention came to be passed on vague and irrelevant grounds. He took us through the counter-

affidavit filed by the Collector & District Magistrate and the material filed along with the counter to show that though initially the detenu was detained as a bootlegger, but subsequently it was altered and detained on the ground that he is a Drug offender, which according to him, is sufficient to set aside the order of detention. He further submits that though Crime No.17 of 2018 registred against the detenu was quashed by this Court in Criminal Petition No.6134 of 2019 on 16.10.2019 itself, but the said fact was not brought to the notice of the detaining authority.

5. Per contra, Sri Yugandhar Reddy, representing the office of Additional Advocate General No.1, opposed the same. He submits that having regard to the fact that the detenu is involved in 14 crimes, which are similar nature, the action of the authorities in detaining him warrants no interference. In other words, he submits that since he is a habitual offender, the authorities were justified in passing the order of detention.

6. In order to appreciate the rival contentions, it is to be noted that in paragraph No.2 of the initial order of detention dated 07.08.2020 it has been mentioned as under :

"WHEREAS, I am satisfied on the basis of the material placed before me that the said person is constantly indulging in boot-legging activities in Allagadda and Ahobilam Areas of Kurnool District City and committing offences and became dangerous to the lonely public in purview of A.P. Prohibition Act, 1995."

7. Subsequently, along with the counter-affidavit filed by the Collector & District Magistrate, an order of detention dated 07.08.2020 was enclosed, wherein it is mentioned as under :

"WHEREAS, I am satisfied on the basis of the material placed before me that the said person is constantly indulging in drug offending activities in Koilakuntla, Allagadda, Sirvella and Nandyal Areas of Kurnool District City and committing offences and became dangerous to the lonely public in purview of A.P. Prohibition Act, 1995."

8. A reading of the two would indicate that in the first order of detention, the detenu was alleged to have been indulging in bootlegging activities in Allagadda and Ahobilam Areas of Kurnool District City, whereas in the second order of detention the same was altered stating that the detenu was indulging in drug offending activities in Koilakuntla, Allagadda, Sirvella and Nandyal Areas of Kurnool District City. From the above it is clear that not only the nature of activity is different, but also the place of activities are different, from what was mentioned in the earlier order. This circumstances itself would show that the detaining authority was not sure of the activities of the detenu and as such it can be said that there was non-application of mind while passing the order of detention.

9. Coming to the grounds of detenu, as seen from the record, eleven out of fourteen grounds, relied upon by the detaining authority, relate to cases registered under the penal provisions and various provisions of Food Safety and Standard Act, 2006, while ground Nos.11, 12 and 14 inter alia relate to NDPS Act and COTP Act.

10. Under the Act, the words Boot-legger and Drug-offender are defined as under :

"(b) "boot-legger" means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968) and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing ;

(f) "drug-offender" means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 or the Narcotic Drugs and Psychotropic Substances Act, 1985 and the rules, notifications and orders made under either Act, or in contravention of any other Law for the time being in force, or who knowingly expends or applies any money in above mentioned things by himself or through any other person or who abets in any other manner the doing of any such thug;"

11. A reading of the above two provisions does not anywhere refer to the offences under Food Safety and Standard Act or under Cigarette and Other Tobacco Products Act, 2003. The term, 'Drug-offender' deals with the offences where a person manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 or the Narcotic Drugs and Psychotropic Substances Act, 1985 and the rules, notifications and orders made under either Act, or in contravention of any other Law for the time being in force. The term 'Boot-legger' deals with those persons who distill, manufacture, store, transport, import, export, sell or distribute any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968) and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force. Therefore, incidents referred to in ground Nos.1 to 11, 13 and 14 do not fall either within the meaning of the word 'Boot-legger' or 'Drug-offender' as defined under the Act. At this stage, it would be appropriate to refer to the judgment of this Court in W.P.No.23313 of 2020, dated 04.03.2021, to show that even if one ground is irrelevant, the same would vitiate the order of detention. It was also a case where the number of crimes were registered against the detenu, not only under the provisions of I.P.C. but also under Cigarette and Tobacco Product Prohibition of Advertisement & Regulation of Trade and Commerce Protection & Supply Distribution Act, 2003. Dealing with the same, the Court held as under :

"16. Having regard to the judgments as noted above, it is crystal clear that even if one ground is irrelevant, the same would vitiate the detention order as a whole. Admittedly, in the instant case, irrelevant grounds have been taken into consideration while passing the order of detention."

12. Since the grounds referred to above (except ground No.12) do not come within the purview of 'Boot-legger' or 'Drug-offender', as defined in the Act, it can be said that the detaining authority has taken into consideration irrelevant grounds while passing the order of detention. As observed earlier even if one ground is irrelevant, the same would vitiate the order of detention as a whole. Accordingly, we hold that the order of detention cannot be sustained under law and therefore the same as well as the consequential orders relating to the detention of the detenu stand quashed. The detenu viz., Nukala Manohar Rao, son of N.Krishna Murthy, shall be released forthwith, if not required in any other case.

13. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous applications, pending, if any, shall stand closed.

ARUP KUMAR GOSWAMI, CJ

C. PRAVEEN KUMAR, J

skmr