

HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION NO: 36444 OF 2025

Between:

Chintala Hymavathi

.....PETITIONER

AND

The State of Andhra Pradesh and 3 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : 29.07.2026

DATE OF JUDGMENT PRONOUNCED : .2026

DATE OF JUDGMENT UPLOADED : .2026

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair
copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

PURUSHOTTAM KUMAR CHINTALAPUDI, J

APHC010712072025



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

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

&

*** THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI**

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Between:

Chintala Hymavathi

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.....RESPONDENTS

! Counsel for the Petitioner : Sri Posani Venkateswarlu, learned senior
counsel assisted by Sri P.Akash, learned
counsel for the petitioner

Counsel for the Respondents: Sri Kirthi Teja Kondaveeti

< Gist :

> Head Note:

? Cases Referred:

1. (2014) 8 SCC 273
2. (2023) 14 SCC 641
3. (2012) 2 SCC 72
4. (2025) 4 SCC 476
5. W.P.No.33545 of 2025 APHC decided on 22.06.2026
6. (1975) 4 SCC 114
7. (2006) 4 SCC 796
8. (1989) 4 SCC 741
9. (2024) 19 SCC 791
10. (1981) 2 SCC 456

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI

WRIT PETITION NO: 36444 OF 2025

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri Posani Venkateswarlu, learned senior counsel assisted by Sri P.Akash, learned counsel for the petitioner and Sri Kirthi Teja Kondaveeti, learned Government Pleader attached to the office of Additional Advocate General appearing for the respondents.

2. The petitioner has filed this writ petition for writ of Habeas Corpus under Article 226 of Constitution of India also challenging the order of preventive detention of the detenu namely Chintala Bhupathi.

I. Facts:

3. The preventive detention order dated 11.12.2025 was passed treating the detenu as 'Goonda' under Section 2(g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 on the following three grounds i.e., three criminal cases:

i) Nawabpet Police Station: Cr.No.350/2018, U/s.302, 120(B), 143, 147, 148, r/w 149 IPC, Sec.3(2)(va), 3(2)(v) of SCs and STs (POA) Act-2015, dated 06.10.2018.

ii) Kodavalur Police Station: Cr.No.134/2024, U/s. 191(2), 191(3), 103(1), 61(2), 351(3), 126(2), 324(4), 49 r/w 190 BNS & Sec. 25, 27(1) of Arms Act – 1959 and Sec.3(2)(V) of SC/ST (POA) Act-2015, dated 27.11.2024.

iii) Muttukur Police Station: Cr.No.197/2025, U/s.126(2), 115(2), 351(2) r/w. 3(5) BNS, dated 29.07.2025.

4. The order of preventive detention was confirmed by the Chief Secretary to Government on 04.02.2026.

II. Submissions of learned counsel for the parties:

5. Learned Senior counsel submitted that in the criminal case under ground No.1 bail was granted and subsequently the detenu (A2) was also acquitted on 02.12.2025 in Sessions Case No.72 of 2020 by the learned Special Judge for trial of offences under SC(s) & ST(s) (POA) Act-cum-V Additional District Sessions Judge, Nellore. However, neither bail conditions were considered nor the affect of acquittal was taken into consideration. The detaining authority mentioned that trial was pending.

6. Learned Senior counsel further submitted with respect to ground No.2 that in the said criminal case bail was granted on 02.01.2025. The detaining authority only mentioned the grant of bail. He did not consider the conditions of bail, though the bail was granted on conditions. He did not consider the impact of the conditions and in view thereof the necessity to pass the order of preventive detention.

7. Learned senior counsel for the petitioner with respect to the ground No.3 submitted that the notice was given under Section 35(3) BNSS and in view thereof there was no necessity to pass the order of preventive detention. He submitted that the service of notice under Section 35(3) is indicative of the fact that in the said case the satisfaction recorded by the police officer was that the investigation can be carried without the arrest of the detenu. So, once notice was given under Section 35(3), the satisfaction of the detaining authority that the detenu deserves to be kept in detention based on that very case i.e., Ground No.3 is vitiated. Referring to Sections 41 & 41A of the Cr.P.C/ Section 35 of BNSS, he placed reliance in ***Arnesh Kumar v. State of Bihar***¹.

8. Learned Senior counsel further submitted that there was a long gap in passing the order of preventive detention from the date of the incidents/criminal cases, based on which the order of preventive

¹ (2014) 8 SCC 273

detention was passed. The first crime is of the year 2018, second crime is of the year 2024 and the third crime is of the year 2025. There was no live link or the proximity between the first criminal case and the date of passing of the order. The casual connection was not established.

9. Learned Senior Counsel further submitted that the detenu does not know English language but he was supplied entire material relied upon by the detaining authority in English language, except the detention order and the grounds of detention. Consequently, he could not be aware of the material which was crucial for the detenu to exercise his right of representation. Non supply of material, the relied upon documents, in a language known to the detenu has violated his fundamental right under Article 22(5) of the Constitution of India.

10. Learned Government Pleader submitted that the offences are of serious nature. The detaining authority was satisfied based on the material that there was necessity to pass the order of preventive detention to prevent the detenu from indulging in any further activities and his acts were prejudicial for the maintenance of public order. The offences fell within the Chapters XVI, XVII and XXII of IPC/ Chapters VI, XVI, XIX of BNSS. The detenu has been rightly termed as Goonda under Section 2(g) of the Act, 1986 and his criminal activities being prejudicial to the public order, the order of preventive detention has

rightly been passed. He submitted that the bail orders have been referred in the order of preventive detention by the detaining authority so the bail conditions, it shall be taken that, were taken due care of. It cannot be said that the bail orders were not considered. The bail conditions did not stop the detenu from committing further offence.

11. Learned Government Pleader further submitted that so far as the contention based on issuance of notice under Section 35 BNSS is concerned notice was issued in that criminal case as per the statutory requirement and the law as laid down in Arnesh Kumar (supra), but because of that it cannot be said that the order of preventive detention could not be passed taking into account that criminal case on the satisfaction recorded by the detaining authority. He placed reliance in ***Pesala Nookaraju v. Government of A.P.***²

12. Learned Government Pleader referring to para 20 of the counter affidavit submitted that, all the material papers were supplied to the detenu in the regional language (Telugu). There was no violation of the detenu's right to submit the representation against the order of preventive detention. However, the detenu did not make any representation.

² (2023) 14 SCC 641

III. Point for determination:

13. The following point arises for consideration:

“Whether the impugned orders of preventive detention & the confirmation call for interference and the detenue deserves to be set at liberty?”

IV. Analysis/consideration:

14. We have considered the aforesaid submissions of the learned counsel for the parties and perused the material on record.

A. Non-consideration of bail orders with conditions:

15. The order of preventive detention in ground Nos.1 & 2 though mentions the bail orders but it has not specifically considered the bail conditions. In ground No.1 the detenu was also acquitted. The detention order does not mention about the acquittal. It takes into consideration that the criminal case is pending. Consequently, so far as ground Nos.1 & 2 are concerned, the preventive detention order cannot be sustained on those grounds. The relevant material the bail orders with the conditions imposed therein and the factum of acquittal in the first case, were relevant consideration for detaining authority to arrive at the subjective satisfaction but those were not taken into consideration. Mere mention of grant of bail is not sufficient. The conditions of bail are

required to be considered while arriving at subjective satisfaction. It can not be presumed nor inferred that by mention of the bail orders there would be consideration of the bail order. Mention of the grant of bail is only as a fact mentioned. It must be clearly reflected from the order of preventive detention that the detaining authority considered those bail conditions and then reached the satisfaction on the material before it that inspite of bail conditions it was necessary to detain the detenu for the reasons recorded in the order.

16. The law is well settled with respect of the consideration of the bail orders that those are relevant material and must be considered to arrive at subjective satisfaction.

17. In ***Rushikesh Tanaji Bhoite v. State of Maharashtra***³ the Hon'ble Apex Court held that the order of detention passed without considering the bail orders i.e., consideration ignoring the material/relevant material could not be sustained. Para Nos.8 to 12 in *Rushikesh Tanaji Bhoite* (supra) read as under:

“8. It would be, thus, seen that the order releasing the detenu on bail in the crime registered on 14-8-2010 and the order relaxing the bail condition were passed by the Judicial Magistrate, First Class, Dharangaon much before the issuance of the detention order dated 10-1-2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining

³ (2012) 2 SCC 72

authority was aware of the bail order granted in favour of the detenu on 15-8-2010.

9. In a case where the detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated 15-8-2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.

11. A three-Judge Bench of this Court in *Rekha v. State of T.N.* [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] decided recently held as under: (SCC p. 254, para 25)

“25. In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail application of the accused was pending on the date when the detention order was passed on 8-4-2010. On the other hand, in Para 4 of the grounds of detention it is mentioned that ‘Thiru. Ramakrishnan is in remand in Crime No. 132 of 2010 and he has not moved any bail application so far’. Thus, 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 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 the alleged similar cases has been given. Hence, the detention order in question cannot be sustained.”

12. In *Rekha* [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] , the detention order was held to be bad as the detaining authority was not aware of the fact that the bail application of the detenu was pending on the date when the detention order was passed. In the present case, the detenu was already

released on bail but the detaining authority was not aware of the fact of grant of bail to the detenu.”

18. In ***Joyi Kitty Joseph v. Union of India***⁴, the Hon’ble Apex Court held that the bail was granted by the jurisdictional court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention order. In the said case the detention order was silent on that aspect. The Hon’ble Apex court interfered with the detention order only on the ground that the detaining authority did not look into the conditions imposed by the Magistrate while granting bail for the very same offence to enter a satisfaction as to whether those conditions were sufficient or not to restrain the detenu from indulging in further like activities of smuggling. Para Nos.32 to 35 in ***Joyi Kitty Joseph*** (supra) are reproduced as under:

“**32.** Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. **We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.**

⁴ (2025) 4 SCC 476

33. *Ameena Begum* [*Ameena Begum v. State of Telangana*, (2023) 9 SCC 587 : (2023) 3 SCC (Cri) 754] , noticed with approval *Vijay Narain Singh v. State of Bihar* [*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : 1984 SCC (Cri) 361] and extracted para 32 from the same (*Vijay Narain Singh* [*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : 1984 SCC (Cri) 361]) : (SCC pp. 35-36)

“32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. *Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within ... not be used merely to clip the wings of an accused who is involved in a criminal prosecution.* It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. ***When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.***”

(emphasis supplied)

34. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set-up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. **When bail was granted by the jurisdictional court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.**

35. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail

for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling.

19. In ***Buddiga Dhana Lakshmi v. State of Andhra Pradesh***⁵, on consideration of various pronouncements this Court held that the bail order and the conditions of the bail are relevant material to be considered to arrive at the subjective satisfaction if the order of detention is yet to be passed. There was no consideration of the bail orders in the order of detention. The impugned order of detention was set aside on that ground. Para Nos.14 to 16 in ***Buddiga Dhana Lakshmi*** (supra) read as under:

“14. In ***Ponnada Geetha (supra)***, a Coordinate Bench of this Court has held that when the detenu was already released on bail in a crime and when it was made basis for passing the order of preventive detention and when such order of bail was not placed before the detention authority, it vitiates the order of preventive detention. Paragraph Nos.(9) to (12) of ***Ponnada Geetha (supra)*** read as under:

“9. However, as per the settled law, the very fact that the order of bail granted to the detenu in Crime No.219 of 2024 of Gopalapatnam Police Station for the offence under NDPS Act, was not placed before the detaining authority, while passing the impugned order of detention, by itself, is sufficient to hold that it vitiates the impugned order of detention. The legal position in this regard is fairly well settled.

10. The Division Bench of the common High Court for the State of Telangana and the State of Andhra Pradesh had an occasion to

⁵ W.P.No.33545 of 2025 APHC decided on 22.06.2026

elaborately deal with the said legal position in the case of **Vasanthu Sumalatha v. State of Andhra Pradesh**(2016) 1 ALT 738 (DB). At paragraph 44 of the said judgment, it is held as follows:

“44. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention, which is based on the very same charge which is to be tried by the criminal court. (*Vijay Narain Singh v. State of Bihar* [(1984) 3 SCC 14]; *Jotha Viswanadh v. Chief Secretary, Govt. of A.P.* [Judgment in W.P.No.10018 of 2012, dated 29.06.2012 (APHC) (DB)]. Where the detenu is released on bail, and is enjoying his freedom under the order of the court, the order of bail must be placed before the detaining authority, when the order of detention is passed, to enable him to reach a proper satisfaction. (*Rushikesh Tanaji Bhoite v. State of Maharashtra* [(2012) 2 SCC 72]. If the detaining authority was unaware of the order of bail, the detention order is rendered invalid as the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority in passing the order of preventive detention (*Rushikesh Tanaji Bhoite* (42 supra); *Rekha* (5 supra); *Jotha Viswanadh* (44 supra).”

11. At paragraph 42 of the said judgment, it is also held by the Division Bench of the common High Court that it is incumbent that all vital materials are placed before the detaining authority to enable him to arrive at the subjective satisfaction as to the necessity for passing an order of detention, as decided in **M. Ahamedkutty v. Union of India** ((1990) 2 SCC 1 and **State of U.P. v. Kamal Kishore Saini**(1988 (1) SCC 287). Therefore, it is held that the bail order is a vital material for consideration and if it is not considered, the satisfaction of the detaining authority would be impaired.

12. Thus, it is obvious from the analogy and the legal position decided in the aforesaid judgment of the Division Bench of the common High Court, which is binding on this Court, that when the detenu was already released on bail in a crime and when it was made basis for passing the order of preventive detention and when the said order of bail was not

placed before the detaining authority, it vitiates the impugned order of preventive detention. Therefore, in view of the law enunciated in the above judgment, as the order of bail is admittedly not placed before the 2nd respondent when he has passed the impugned order of preventive detention, the impugned order of preventive detention is vitiated and, therefore, cannot be sustained.”

15. The aforesaid is the settled position in law. The bail order and the conditions of bail are relevant material to be considered to arrive at the satisfaction if the order of detention is yet to be passed.

16. Admittedly, there is no consideration of all the bail orders in the order of detention though in five cases the bail was granted prior to passing of the order of detention and even in the order of approval and confirmation by the State there is no consideration whereas by that time in all seven cases bail (s) had been granted.”

20. In ***Pesala Nookaraju*** (supra) on which learned Government Pleader placed reliance, the Hon’ble Apex Court held as under:

“17. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. **An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal.** The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (See : *Haradhan Saha v. State of W.B.* [*Haradhan Saha v. State of W.B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816])”

21. Learned Government Pleader submitted that even after discharge or acquittal in a criminal case the detention order may be passed.

However, we are of the view that even if after acquittal, preventive detention order may be passed but certainly it cannot be passed without taking into account the factum of acquittal. In the present case the detaining authority was not aware of the acquittal of the detenu in criminal case in ground No.1. The satisfaction recorded is without consideration of material fact of acquittal in a criminal case in ground No.1 which has also been made the basis of preventive detention order.

B. Effect of notice under Section 41A CrPC/Section 35 BNSS:

22. So far as ground No.3 is concerned notice under Section 35 BNSS was issued. The submission advanced by the learned senior counsel is that in view of that notice, there was no necessity for the detaining authority under the Act, 1986 to pass the order of preventive detention. Once the police officer under Section 35 of BNSS was satisfied that there was no need to arrest the accused and so notice under Section 35(3) of BNSS was issued, keeping in view Section 35(1)(b)(a to e) there was no necessity to keep the accused/detenu in detention by making his arrest even for the purpose of preventive detention Act. A satisfaction could not be arrived at by the detaining authority under the Act, 1986, contrary to the satisfaction of the Police Officer. He placed much reliance in the judgment in the case of **Arnesh Kumar** (supra).

23. In ***Arnesh Kumar*** (supra) Sections 41 & 41A Cr.P.C were under consideration. Section 35 BNSS is same as Sections 41 & 41A Cr.P.C.

24. Section 35 of the BNSS reads as under:

“35. (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.”

25. In ***Arnesh Kumar*** (supra) on the point of notice under Section 41

Cr.P.C (Section 35 of BNSS), the Hon’ble Apex Court held as under:

“7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to

seven years and fine, Section 41(1)(b) CrPC which is relevant for the purpose reads as follows:

“41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a)^{***}

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if **the following conditions are satisfied, namely—**

(i)^{***}

(ii) the police officer is satisfied that such arrest is necessary—

(a) **to prevent such person from committing any further offence;** or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; or

(e) as unless such person is arrested, his presence in the court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.”

7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be

less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to

authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:

“41-A. Notice of appearance before police officer.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.”

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may

be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

26. In the criminal case in ground No.3 notice was issued under Section 35(3) BNSS. Learned senior counsel submitted that the police officer was satisfied that the arrest of the accused(detenu) was not necessary. He submitted that one of the conditions on which police officer has to satisfy is that such arrest is necessary (a) to prevent such person from committing any further offence. So when notice under Section 35(3) BNSS is issued it means that the police officer was satisfied that it was not necessary to arrest for the reason that such person would not commit any further offence even if not arrested. The purpose of detention is also preventive, to prevent the detenu from indulging in any further criminal activities and so, in view of notice under Section 35(3) having been issued, no case for preventive detention was made out.

27. We are not in agreement with the submission of the learned senior counsel. We are of the view that the police officer under Cr.P.C or BNSS

taking the decision, on his satisfaction that, the arrest was not necessary, is different from the subjective satisfaction of the detaining authority under the Act, 1986. The authorities under both the Acts are different. Under Cr.P.C./BNSS it is police officer and under the Act, 1986 for preventive detention it is the District Collector. It is not necessary under law that the satisfaction of one authority be also the same as of the other authority under different Acts. The subjective satisfaction based on the material placed before different authorities may be differently arrived at. Even on the same material, the subjective satisfaction recorded under one Act, may differ keeping in view the object or purpose of the other Act. The material before the detaining authority under the Act, 1986 is not only with respect to that one case in which notice was issued under Section 35. There were other cases also, taken into consideration against the detenu. The criterion keeping which in view the satisfaction is arrived under the Act, 1986 is the disturbance or the likelihood of disturbance of the 'public order'. That is not the consideration under Section 35 when the notice is issued. The subjective Satisfaction being based on different material, being of different authorities and with different objective on different consideration, it cannot be said that the satisfaction arrived at by the police officer under Section 35 for not arresting the accused and issuing only notice, must also be the subjective satisfaction of the detaining

authority or the detaining authority cannot arrive at its independent subjective satisfaction.

28. Section 41A Cr.P.C/35 BNSS is to be resorted to by the investigation officer before arresting an individual and that provision regulates the power of the investigation officer to arrest an individual. The main object is for carrying out the investigation into a crime by resorting to custodial investigation if the investigating officer is satisfied on the considerations under Section 35(3) BNSS/Section 41A Cr.P.C., otherwise not. The arrest would be for a limited purpose to facilitate the investigation, whereas under the Preventive Detention Act, 1986, the preventive detention is aimed at maintenance of public order. Additionally, when under preventive detention, order can be passed in spite of the bail orders or even after discharge or acquittal on the statutory satisfaction of the detaining authority arrived at in accordance with law, it cannot be held that a criminal case in which Sections 41 & 41A Cr.P.C/Section 35 BNSS have been resorted to by giving notice and by not making arrest of the accused, such a criminal case cannot be taken into account for passing the order of preventive detention.

29. So on the aforesaid point of ground No.3, we are not satisfied that the detaining authority, on recording the satisfaction different from the

satisfaction recorded by the police officer under Section 35 BNSS could not pass the order of preventive detention.

C. No live link or proximate link

30. The law is well settled that there must be a proximate and continuous link between the prejudicial activities and the purpose of detention, so as to establish a rational nexus between the two. In ***Mohd. Sahabuddin v. Distt. Magistrate, 24 Parganas***⁶, the Hon'ble Supreme Court quashed the order of preventive detention on the sole ground that the order of preventive detention was passed nearly seven months after the criminal incident. Subjective satisfaction had no proximate rational nexus with prejudicial act. Para-3 of ***Mohd. Sahabuddin*** (supra) reads as under:

“3. On the basis that there is a long unexplained delay between the criminal occurrence and the detention order, this Court has held that such detention must be held illegal because the subjective satisfaction has no proximate rational nexus with the prejudicial act. We have to follow the same view here also. The order of detention is quashed, the *rule nisi* made absolute and the petitioner is directed to be released forthwith.”

31. In ***Rajinder Arora v. Union of India***⁷, the Hon'ble Apex Court has held that the delay in issuing the order of detention is a valid ground for quashing the order of detention. The Hon'ble Apex Court referred to ***T.A.***

⁶ (1975) 4 SCC 114

⁷ (2006) 4 SCC 796

Abdul Rahman v. State of Kerala⁸ in which it was held that there should be a proximity of time between the prejudicial activities and the purpose of detention, though, no hard-and-fast rule can be laid down, which may be applicable equally to the facts and circumstances of every case. The test of proximity is not a rigid or mechanical test by counting the number of months between the offending acts and the order of detention. It has to be examined whether the causal connection has been broken in the circumstances of each case. Para No.21 of ***Rajinder Arora*** (supra) reads as under :

21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in *T.A. Abdul Rahman v. State of Kerala* [(1989) 4 SCC 741 : 1990 SCC (Cri) 76 : AIR 1990 SC 225] stating: (SCC pp. 748-49, paras 10-11)

“10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a

⁸ (1989) 4 SCC 741

delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

32. The detaining authority took into consideration the criminal cases of the year 2018 & 2024, but without recording any satisfaction as to how between those very old cases and the purpose of preventive detention there was causal connection alive. The test of live link and proximity, due to long delay and the necessity for detaining the detenu based on the satisfaction which itself was to be real and genuine, has not been considered.

33. In ***Pramod Singla v. Union of India***⁹, the Hon’ble Apex Court held that in cases of preventive detention, every procedural irregularity, keeping in mind the principles of Article 21 and Article 22(5) of the Constitution of India, must be accrued in favour of the detainee.

34. The order of preventive detention has been passed under Sections 3(1) and 3(2) of the Andhra Pradesh Prevention of Dangerous Activities

⁹ (2024) 19 SCC 791

of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

35. In **Shiv Parsad Bhatnagar vs. State of M.P and another**¹⁰, the Hon'ble Apex Court has held that "the single vicious ground is sufficient to vitiate an order of detention."

V. Conclusion:

36. Thus considered, the order of preventive detention and of confirmation cannot be sustained and deserve to be set aside.

VI. Result:

37. The writ petition is allowed. The order of preventive detention dated 11.12.2025 and the order of confirmation dated 04.02.2026 are set aside/quashed.

38. The detenu shall be set at liberty immediately, if he is not in detention in any other pending case.

39. The detaining authority shall be at liberty to pass fresh order in accordance with law.

40. In case any order of detention is so passed afresh, the period of detention shall not exceed in total the statutory period, including the period already served under the impugned detention order.

¹⁰ (1981) 2 SCC 456

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

PURUSHOTTAM KUMAR CHINTALAPUDI,J

Dated: .2026
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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI

WRIT PETITION NO: 36444 OF 2025

Dated: .09.2026
Note: L.R. copy be marked
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