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APHC010460382025

[3562]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION NO: 23639 of 2025

Dunga Kumari ...Petitioner

Vs.

The State Of Andhra Pradesh and Others ...Respondent(s)

****

Advocate for Petitioner: D PURNACHANDRA REDDY

Advocate for Respondent: THE ADVOCATE GENERAL

CORAM : SRI JUSTICE RAVI NATH TILHARI

SRI JUSTICE SUBHENDU SAMANTA

DATE :

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri D. Purnachandra Reddy, learned counsel for the petitioner and Sri Kirthi Teja, learned Government Pleader, attached to the Office of the Additional Advocate General, appearing for the respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed for a Writ of Habeas Corpus by the petitioner for direction to the respondents to release the petitioner's husband, namely, Dunga Manikyam (in short 'the detenu') pursuant to the Order of his detention.

3. The 2nd respondent – the Principal Secretary to Government (FAC), Revenue (Excise-II) Department, State of Andhra Pradesh, vide G.O.Rt.No.711, dated 09.07.2025 passed an Order of Detention under Section 3 (1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short 'PIT NDPS Act, 1988') on the ground that the detenu was involved in 'illicit traffic' within the meaning of Section 2 (e) (iii) of the PIT NDPS Act, 1988 and his activities were prejudicial to the maintenance of the public order and to prevent him from further indulging in such type of activities, it was necessary to pass the Order of Detention. The case of the detenu was placed before the Advisory Board which reviewed and submitted its reports/opinions dated 07.08.2025 stating that there was sufficient cause for the detention of the detenu and accordingly, the State Government issued G.O.Rt.No.931, dated 26.08.2025 under Section 3 (1) read with Section 11 of the PIT NDPS Act, 1988, confirming the order of detention for a period of 12 months from the date of detention.

4. The Order of Detention was passed basing on six different criminal cases, registered against the detenu. Those cases are as under:

Sl.No.	**Details of Case/Crime**	**Property Seized**
1.	Cr.No.128/2017 of Nakkapalli P.S. for the offences under Sections 25, 8C, 20 (b) of PIT NDPS Act	40 kgs Ganja and Auto

2.	Cr.No.11/2018 of Rolugunta PS for the offences under Sections 8C, 20 (b) (ii) (c) and 25 of PIT NDPS Act	30 kgs Ganja and Car & Auto
3.	Cr.No.28/2018 of Rolugunta PS for the offences under Sections 8C, 20 (b) (ii) (c) and 25 of PIT NDPS Act	60 kgs Ganja, two Cars & Pulsar Bike
4.	Cr.No.66/2018 of Pithapuram PS for the offences under Sections 8C and 20 (b) (ii) (c) of PIT NDPS Act	29 kgs Ganja and Auto
5.	Cr.No.344/2019 of Payakaraopeta PS for the offences under Sections 8C, 20 (b) (i), 20 (b) (ii) (c) and 25 of PIT NDPS Act	175 kgs of Ganja and Auto
6.	Cr.No.42/2025 of Payakaraopeta PS for the offences under Sections 20 (b) (ii) (c) and 25 r/w. 8 (c) of PIT NDPS Act	600 kgs of Ganja and Bolero vehicle

5. Challenging the aforesaid Orders, the present writ petition has been filed.

6. Learned counsel for the petitioner raised the only submission that the Order of Detention is unsustainable and erroneous in law. He submitted that out of 6 cases, the detenu was granted bail in 5 cases. In one other case, out of 6 cases, i.e., Cr.No.42 of 2025 (i.e., 6th case) supra of Payakaraopeta Police Station, on the date of passing of the Order of Detention i.e., 09.07.2025, the detenu was in judicial custody. The said case was also taken into consideration, but the 2nd respondent did not

record its satisfaction about the necessity to pass the order of detention once the detenu was already in judicial custody, or about the imminent possibility of his release on bail in that case. He submitted that the Order of Detention, cannot be sustained on that ground and so the order of confirmation.

7. Learned counsel for the petitioner placed reliance in the following cases in support of his contentions:

1. ***Syed Mohiyuddin v. State of Andhra Pradesh***[1]
2. ***Champion R. Sangma v. State of Meghalaya***[2]
3. ***V. Adi Lakshmi v. State of Andhra Pradesh***[3]
4. ***Cheemparthi Parvin v. State of Andhra Pradesh***[4]
5. ***Lakshmi v. State of Andhra Pradesh***[5]
6. ***Cheemparthi Salma v. State of Andhra Pradesh***[6]

8. Sri Kirthi Teja, learned Government Pleader, for the respondents submitted that the aforesaid Cr.No.42 of 2025, as referred to above, was taken into consideration in the detention order. In the said case, the detenu was in the judicial custody. In the order of detention any satisfaction as regards the possibility or the likelihood of the detenu being

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[1] 2018 SCC OnLine Hyd 515
[2] (2015) 16 SCC 253
[3] 2020 SCC OnLine AP 565
[4] WP.No.1803 of 2021, Decided on 27.04.2021 (APHC, Amaravati)
[5] WP.No.7335 of 2023 & Batch, Decided on 03.07.2023 (APHC, Amaravati)
[6] WP.No.932 of 2025, Decided on 26.09.2025 (APHC, Amaravati)

released on bail was not recorded. However, he submitted further that even if the contention of the petitioner's counsel be correct on that ground, the order of detention would still not be vitiated. The order of detention can stand in view of the other grounds with respect to the other criminal cases i.e., in Ground Nos.1 to 5.

9. Learned Government Pleader referred to the provisions of Section 6 of PIT NDPS Act 1988 to contend that the Order of Detention shall be deemed to have been made separately on each of the grounds, it has been passed and shall not be invalid or inoperative merely because on Ground No.6 the detention order would be invalid.

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

11. The Order of Detention has been passed by the Principal Secretary to Government on Ground Nos.1 to 6. The challenge is with respect to Ground No.6, i.e., Cr.No.42 of 2025. The detenu was in judicial custody in that case and the Principal Secretary to Government has not recorded its satisfaction that there was no need to pass the Order of Detention or on the point that there was likelihood of the detenu being released on bail.

12. In ***Champion R. Sangma*** (supra), the Hon'ble Apex Court has held that even if the detenu is in jail in connection with some criminal cases, there is no prohibition in law to pass the detention order. However,

there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived while passing the detention order. Referring to the case in ***Kamarunnissa v. Union of India***[7] those three factors were re-stated; (1) If the authority passing the order is aware of the fact that the detenu is actually in custody; (2) If he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him from so doing. The Hon'ble Apex Court held that if the authority passes an order after recording his satisfaction on these aspects, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher Court.

13. Paragraphs 9, 10 and 11 of ***Champion R. Sangma*** (supra) are reproduced as under:

> "**9.** Coming to the ground on which we intend to allow this appeal, we may point out that even if the appellant is in jail in connection with some criminal case(s) there is no prohibition in law to pass the detention order. Law on this aspect is well settled and stands crystallised by a plethora of judgments of this Court. However, a reading of those very judgments also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order.

[7] (1991) 1 SCC 128

10. There are three such factors which were restated in *Kamarunnissa* v. *Union of India* [*Kamarunnissa* v. *Union of India*, (1991) 1 SCC 128 : 1991 SCC (Cri) 88] : (SCC pp. 140-41, para 13)

"*13*. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (*1*) if the authority passing the order is aware of the fact that he is actually in custody; (*2*) if he has reason to believe on the basis of reliable material placed before him (*a*) that there is a real possibility of his being released on bail, and (*b*) that on being so released he would in all probability indulge in prejudicial activity; and (*3*) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in *Ramesh Yadav* [*Ramesh Yadav* v. *District Magistrate, Etah*, (1985) 4 SCC 232 : 1985 SCC (Cri) 514] was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."

11. The aforesaid dicta is reiterated in subsequent judgments as well. Some of which are as under:

(*i*) *T.V. Sravanan* v. *State* [*T.V. Sravanan* v. *State*, (2006) 2 SCC 664 : (2006) 1 SCC (Cri) 593] ,

(*ii*) *K.K. Saravana Babu* v. *State of T.N.* [*K.K. Saravana Babu* v. *State of T.N.*, (2008) 9 SCC 89 : (2008) 3 SCC (Cri) 679] ,

(*iii*) *Huidrom Konungjao Singh* v. *State of Manipur* [*Huidrom Konungjao Singh* v. *State of Manipur*, (2012) 7 SCC 181 : (2013) 1 SCC (Cri) 956] ."

14. In ***Champion R. Sangma*** (supra), it was recorded that the appellant therein (detenu) was under incarceration as he was implicated in as many as 8 cases and he was in jail and he was not yet granted bail. It was held that it was for the respondents therein (the detaining authority) to satisfy the Court as to whether the triple requirements as postulated stood satisfied. Those requirements were not satisfied. There, though the detention order and even the grounds of detention recorded the factum of the detenu being in custody, no satisfaction was recorded by the detaining authority that there was reliable material before the authority on the basis of which the detaining authority had reasons to believe that there was real possibility of release on bail of the detenu. The detention order was silent on that aspect of possibility of indulging in activity if the detenu was granted bail. So, the Hon'ble Apex Court held that the detention order suffered from material illegality which vitiated the order of detention.

15. The other cited judgments of ***Syed Mohiyuddin*** (supra), ***Cheemparthi Parvin*** (supra) and ***V. Adi Lakshmi*** (supra) as in para-7 (supra) also hold the same relying upon the Hon'ble Apex Court judgment in ***Champion R. Sangma*** (supra). But, the question is whether the Order of Detention would be vitiated on the aforesaid submissions and grounds and the detenu entitled to be set free.

16. The aforesaid law is by now well settled. When tested on the triple tests as in ***Champion R. Sangma*** (supra) the Order of Detention satisfied only the first test, i.e., the detaining authority was aware that the detenu was in custody in Cr.No.42 of 2025 (Ground No.6). However, the other two tests are not satisfied. While considering the Ground No.6, the Principal Secretary to Government has not recorded its satisfaction; (1) that the authority had reason to believe on the basis of reliable material placed before him, (a) that there was a real possibility of the detenu being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (2) if it was felt essential to prevent him from so doing, with respect to the aforesaid case. So, the Order of Detention cannot stand on Ground No.6.

17. ***Champion R. Sangma*** (supra) was on Meghalaya Preventive Detention Act, 1995. The other judgments on which reliance was placed are under Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986. Those are not under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

18. We are not saying that the detaining authority while passing the Order of Detention under PIT NDPS Act has not to record its satisfaction on the aspects as laid down in ***Champion R. Sangma*** (supra) if the

detenu is, in custody. But what we say is that the effect of non-compliance with the above requirements with respect to one ground out of six grounds (as is the present case) would not invalidate the order of detention and the detenu would not be entitled to release. We say so because of Section 6 of PIT NDPS Act.

19. Section 6 of PIT NDPS Act provides as under:

> "6. Grounds of detention severable.-Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-
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> (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-
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> (i) vague,
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> (ii) non-existent,
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> (iii) not relevant,
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> (iv) not connected or not proximately connected with such person, or
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> (v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (I) of section 3 with reference to the remaining ground or grounds and made the order of detention;
>
> (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (I) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

20. A bare perusal of Section 6 of PIT NDPS Act shows that where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been passed

separately on each of such grounds, and accordingly, (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are; (i) vague, (ii) non-existent, (iii) not relevant, (iv) not connected or not proximately connected with such person, or (v) invalid for any other reasons whatsoever, and it is not therefore possible to hold that the Government or Officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and make the order of detention. Clause (b) makes it more clear that the Government or Officer making the order of detention shall be deemed to have made the order of detention under the sub-section (1) of Section 3 after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

21. In ***Mortuza Hussain Choudhary v. State of Nagaland***[8] the Hon'ble Apex Court observed and held that Section 6 of PIT NDPS Act, 1988 provides that grounds of detention are severable and an order of detention shall not be deemed to be invalid or inoperative merely because one or some of the grounds are either found to be vague, nonexistent, irrelevant or not connected with such persons or is invalid for any other reason. The Hon'ble Apex Court further observed that Section 6 specifically records that where a person has been detained pursuant to an order of detention under Section 3 (1), which has been made on two or more grounds, such order shall be deemed to have been made

[8] 2025 SCC OnLine SC 502

separately on each ground. Paragraph-7 of ***Mortuza Hussain Choudhary*** (supra) reads as under:

> "7. It would be apposite at this stage to take note of the statutory regime of the Act of 1988. Section 3(1) thereof empowers the authorized officers, either of the Central Government or of a State Government, to detain any person with a view to prevent him/her from engaging in illicit traffic in narcotic drugs and psychotropic substances. Section 3(2) requires a State Government that passes such a detention order to forward a report of the same to the Central Government within ten days. Section 3(3) mandates communication of the grounds on which the detention order has been made to the detenu as soon as may be after the detention, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. The sub-section records that this requirement is for the purposes of Article 22(5) of the Constitution, which mandates such communication as soon as may be. Section 6 of the Act of 1988 provides that the grounds of detention are severable and an order of detention shall not be deemed to be invalid or inoperative merely because one or some of the grounds is either found to be vague, non- existent, irrelevant or not connected with such persons or is invalid for any other reason. Section 6 specifically records that where a person has been detained pursuant to an order of detention under Section 3(1), which has been made on two or more grounds, such order shall be deemed to have been made separately on each ground. This indicates that the order of detention must be accompanied by the 'grounds of detention' made by the detaining authority itself. Section 11 of the Act of 1988 speaks of the maximum period of detention and states that the same may be extended up to 2 (two) years from the date of detention."

22. In ***Prakash Chandra Mehta v. Commissioner and Secretary. Government of Kerala***[9] where under consideration was Section 5-A of Conservation of Foreign Exchange and Prevention of Smuggling

[9] 1985 SCC OnLine SC 316

Activities Act (COFEPOSA Act) which is on the same lines as Section 6 of PIT NDPS Act, the Hon'ble Apex Court held that Section 5-A stipulates that when the detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad.

23. Paragraphs 70 & 71 of ***Prakash Chandra Mehta*** (supra) read as under:

> "**70.** Section 5-A of the said Act which was introduced by amendment in 1975 reads as follows:
>
> "5-A. *Grounds of detention severable*.—Where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—
>
> (*a*) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—
>
> (*i*) vague,
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> (*ii*) non-existent,
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> (*iii*) not relevant,
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> (*iv*) not connected or not proximately connected with such person, or
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> (*v*) invalid for any other reason whatsoever,
>
> and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention;

(*b*) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

71. Section 5-A stipulates that when the detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad."

24. In ***Vashisht Narain Karwaria v. State of U.P***[10] the same principle has been laid down by the Hon'ble Apex Court that in view of the specific provision even a single ground for detention if found to be material may be the basis of the detention order. Paragraph-11 of ***Vashisht Narain Karwaria*** (supra) reads as under:

"**11.** ……. What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the ground is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention."

25. In view of the statutory provision of Section 6 of PIT NDPS Act, the Order of Detention passed under Section 3 (1) of PIT NDPS Act 1988 when passed on two or more grounds, such Order of Detention shall be deemed to have been passed separately on each of such grounds. In the present case, the impugned Order of Detention has been passed on six

[10] (2990) 2 SCC 629

grounds i.e., two or more grounds. Such Order of Detention shall be deemed to have been passed separately on each of such grounds from Ground Nos.1 to 6. So, even if it be taken that the Order cannot be sustained on Ground No.6, for non-consideration of three requirements with respect to the detenu being in judicial custody, it cannot be held that the detaining authority had not satisfied on the other grounds, only because of no satisfaction recorded relating to Ground No.6. It shall be deemed that the State Government or the detaining authority had made the Order of Detention after being satisfied on the remaining grounds.

26. Order of Detention shall not be deemed to be invalid for the remaining grounds and it shall be deemed that the Order of Detention has been made under Section 3 (1) of PIT NDPS Act 1988 after being satisfied with reference to the remaining 5 grounds. Simply because the Order of Detention cannot be sustained on Ground No.6, it cannot be said that the Order of Detention cannot be sustained on Ground Nos.1 to 5. It cannot be that the Order of Detention has to go. Notwithstanding that the Order of Detention cannot stand on Ground No.6, it is still a valid Order on Ground Nos.1 to 5. As already mentioned (supra), the only ground of challenge raised before us was to the Ground No.6.

27. In the judgment cited, the Preventive Detention Act as involved did not contain any provision like Section 6 of the PIT NDPS Act 1988.

28. The Order of Detention is sustained on the Ground Nos.1 to 5, though not on Ground No.6. In view of Section 6 of PIT NDPS Act 1988, the Order of Detention would not be illegal and the detenu would not be entitled for release.

29. The Writ Petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

SUBHENDU SAMANTA, J

Date: 08.07.2026
Dsr

Whether the order is :
Reasoned 'Yes'
Reportable 'Yes'