APHC010120692026

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

WEDNESDAY, THE 14th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 6989 OF 2026

Between:

1. BANDI VEERA DURGA, /o. Bandi Dharma Raju (detenue) Age about 29-yrs, D. No . 2-252, Venkatanagaram, Rajahmundiy Rural, East Godavari District. A.P.

...Petitioner

AND

1. THE STATE OF AP, rep. by its Secretary General Administration (Law and Order), Home Department, A.P Secretariat Office, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh. 522238

2. The Collector and District magistrate, East Godavari District. Rajamahendravaram. 533101

3. The Superintendent of Police, Rajahmundiy East Godavari District, Andhra Pradesh. 533106

4. The Superintendent Central Prison, Rajamahendravaram, East Godavari District - A.P 533106

5. The Chief secretary, A.P Secretariat Office, Velagapudi, Amaravathi, Guntur District, Andhrapradesh 522238

6. The Deputy Superintend of Police North Zone, Rajamahendravaram. 533106

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased to issue a Writ Order or direction particularly, one in the nature of writ of Habeas Corpus to declare the Detention Order dated 28.11.2025 vide ref No. Ml/ 541643/ 2025 issued by the 02nd Respondent Collector and District magistrate, East Godavari District. Rajamahendravaram as unconstitutional and violation of Article 21 and 22 of the Constitution of India with a consequential prayed to set the detenu at liberty forthwith, on the strength of the as in the case of Bodapati Laxmi vs The State of Telangana on June, 2024 vide W.P. No. 12064 of 2024 on the file of the High Court of Telangana and pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant leave to the petitioner herein to file the Rejoinder affidavit by the petitioner in WP No.6989 of 2026 in the interest of justice and pass

Counsel for the Petitioner: S DUSHYANTH REDDY,RAJESH KUMAR B

Counsel for the Respondents: ADDL ADVOCATE GENERAL

The Court made the following order:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 6989 OF 2026

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

Heard Sri S.Dushyanth Reddy, learned *amicus curiae* for the petitioner appointed by this Court by order dated 05.10.2026 under the circumstances mentioned in the said order as the learned counsel for the petitioner was continuously not appearing. Also heard Sri Akula Venkata Sai Jagadeesh, learned Assistant Government Pleader 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 Bandi Dharma Raju @ Banda.

3. With respect to the detenu an order of preventive detention vide proceedings Ref.No.M1/541643/2025, dated 28.11.2025 was passed by the Collector & District Magistrate, East Godavari District under Sections 3(1) and 3(2) r/w 2(g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. The same was confirmed vide G.O.Rt.No.199 General Administration (SC-I) Department dated 02.02.2026.

4. The preventive detention order was passed on the following criminal cases: (9 in number)

i) Cr.No.393/2024 under Section 331(4), 305 BNS of Rajanagaram PS.

ii) Cr.No.279/2024 under Section 303(2), 305 BNS of Gokavaram PS.

iii) Cr.No.335/2024 under Section 305(a), 331(4) of Bommuru P.S.

iv) Cr.No.264/2024 under Section 303(2) BNS of Korukonda PS.

v) Cr.No.107/2025 under Section 305(a), 331(4) of Prakash Nagar PS.

vi) Cr.No.186/2025 under Section 305(a), 331(4) of III Town L & O PS of Rajamahendravaram.

vii) Cr.No.305/2025 under Section 305(a), 331(4) of Rajanagaram PS.

viii) Cr.No.523/2025 under Section 7(B) R/w 8(B) of A.P.Prohibition 1995 as amended 18 of 2020 of III Town L & O PS, Rajamahendravaram.

ix) Cr.No.525/2025 under Section 7(B) R/w 8(B) of A.P.Prohibition 1995 as amended 18 of 2020 of III Town L & O PS, Rajamahendravaram.

5. Learned *amicus curiae* for the petitioner submits that the order of preventive detention has been passed by 9 grounds. He submits that out of those 9 cases, bail was granted in 7 cases. The said bail orders were not considered by the detaining authority. So, the order of preventive detention, and its confirmation, suffers from non-consideration of the relevant material. The satisfaction of the detaining authority is vitiated and the order cannot be sustained.

6. Learned amicus curiae for the petitioner further submits that with respect to ground Nos.8 & 9 i.e., Crime Nos.523 & 525 of 2025, the detenu was in judicial custody at the time of passing of the order of preventive detention. Even if the ground was taken into consideration for passing the order of preventive detention, the detaining authority has not considered if the triple test was satisfied. Consequently, the order of detention cannot be sustained on ground No.8 & 9.

7. Learned amicus curiae for the petitioner further submits that with respect to ground Nos.8 & 9 the petitioner cannot be termed as “Goonda” under the Act, 1986.

8. Learned Assistant Government Pleader submits that the bail orders were not placed before the detaining authority and so not considered by the detaining authority.

9. Learned Assistant Government Pleader could not dispute that the detenu was in judicial custody with respect to ground Nos.8 & 9 and the detaining authority did not consider the satisfaction of the triple test.

10. We have considered the aforesaid submissions and perused the material on record.

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

12. In ***Rushikesh Tanaji Bhoite v. State of Maharashtra*** [1] 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

[1] (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."

13. In ***Buddiga Dhana Lakshmi v. State of Andhra Pradesh***[2], 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:
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> > *"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.*

[2] W.P.No.33545 of 2025 APHC decided on 22.06.2026

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

14. In ***Joyi Kitty Joseph v. Union of India***[3], 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

[3] (2025) 4 SCC 476

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.**
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> **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)
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> > "*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.

15. It is also well settled in law that if the detenue is in the judicial custody in a criminal case, the order of detention can validly be passed taking into account that criminal case, but that is subject to the satisfaction of the triple requirements as laid down in ***Champion R.Sangma Vs. State of Meghalaya and others,*** in which the Hon'ble Apex Court held as follows:-

"**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 crystalized by 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.

10. There are three such factors which were re-stated in ***Kamarunnissa vs. Union of India & Anr***. Reported in 1991 (1) SCC 128 (pa.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 the case of Ramesh Yadav 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.Sravan v. State {(2006) 2 SCC 664}

(ii) K.K.Saravana Babu v. State of T.N. {(2008) 9 SCC 89}

(iii) Huidrom Konungjao Singh v. State of Manipur.

{(2012) 7 SCC 181}"

16. In the present case, for the reasons of non-consideration of the bail orders; as also non-recording of the satisfaction on the fulfillment of triple test, the order of preventive detention dated 28.11.2025 as also the confirmation order dated 02.02.2026 cannot be sustained.

17. The order of preventive detention has been passed under Sections 3(1) and 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

18. In **Shiv Parsad Bhatnagar vs. State of M.P and another**[4], the Hon'ble Apex Court has held that "the single vicious ground is sufficient to vitiate an order of detention."

19. The writ petition is allowed. The order of preventive detention dated 28.11.2025 and the order of confirmation dated 02.02.2026 are set aside.

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

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

[4] (1981) 2 SCC 456

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

23. We place on record our appreciation for the assistance rendered to this Court by the learned Amicus Curiae.

24. Copy of the order be sent to the petitioner and also to the District Collector, East Godavari District.

No order as to costs.

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

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RAVI NATH TILHARI,J

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ALAPATI GIRIDHAR,J

Dated: 14.10.2026
AG

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT PETITION NO: 6989 OF 2026

Dated: 14.10.2026
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