

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

WRIT PETITION NO: 6491 OF 2026

% 28.07.2026

Rai Pavithra

.....petitioner

And:

\$ State of Andhra Pradesh & 4 others

.... respondents

!Counsel for the petitioner : Sri D. Purnachandra Reddy

^Counsel for the respondents : Sri Akula Venkata Sai Jagadeesh,
learned Assistant Government Pleader

<Gist:

>Head Note:

? Cases referred:

1. (2012) 2 SCC 72
2. W.P.No.33545 of 2025 APHC decided on 22.06.2026

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

WRIT PETITION NO: 6491 OF 2026

Between:

Rai Pavithra

..... PETITIONER

AND

State of Andhra Pradesh & 4 others

....RESPONDENTS

DATE OF JUDGMENT RESERVED :

DATE OF JUDGMENT PRONOUNCED : 28.07.2026

DATE OF JUDGMENT UPLOADED : .07.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

**THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR
CHINTALAPUDI**

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|---|--------|
| 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

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

WRIT PETITION NO: 6491 OF 2026

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

Heard Sri D.Purnachandra Reddy, learned counsel for the petitioner and 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 detention of the detenu namely Parawada Surya Shayam Kumar, presently detained in Central Prison, Visakhapatnam.

3. With respect to the detenu an order of preventive detention vide G.O.Rt.No.2, dated 01.01.2026 was passed by the Principal Secretary to Government (FAC), Revenue (Excise-II) Department under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short 'PIT NDPS Act, 1988). The same was confirmed vide G.O.Rt.No.261 dated 16.02.2026 (Ex.P2).

4. The preventive detention order was passed on the following two criminal cases:

i) Cr.No.117 of 2023 under Section 20(b)(ii)(c) of NDPS Act, 1985 of Arilova Police Station and

ii) Cr.No.35 of 2025 under Section 20(b)(ii)(c) of NDPS Act, 1985 of Airport Police Station, Visakhapatnam.

5. Learned counsel for the petitioner submits that in the first case i.e., Cr.No.117 of 2023, bail was granted on 12.07.2023 whereas in the second case i.e., Cr.No.35 of 2025, bail was granted on 19.08.2025. The bail orders were not placed before 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 therefore is vitiated and the order cannot be sustained.

6. The learned Assistant Government Pleader submits that in the first case, the bail was granted on 12.07.2023 and in the proposal, the bail order was not placed before the detaining authority. In the second case, he submits that the bail was granted on 19.08.2025, i.e., after the proposal date. So, it could not be included in the proposals for passing the detention order. He referred to the counter affidavit to contend that the bail orders were not placed and so not considered by the detaining authority.

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

8. The order of preventive detention was passed based on the aforesaid two criminal cases. In the first case, the bail was granted on 12.07.2023 and in the second case the bail was granted on 19.08.2025. The copy of the bail orders have been placed along with the list of citations submitted to the Court by the learned counsel for the petitioner. Those bail orders were not considered by the detaining authority. The first bail order was not forwarded while submitting proposal and the second bail order though after the date of submission of the proposal but certainly before the date of passing of the order of detention, was also not forwarded and so was not considered by the detaining authority.

9. 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

¹ (2012) 2 SCC 72

order or the grounds supplied to the detenu do not show that the detaining 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.”

10. 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:

“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.”*

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.”

11. In the present case, also for the same reasons, the order of preventive detention dated 01.01.2026 as also the confirmation order dated 16.02.2026 deserve to be set aside.

12. The writ petition is allowed. The order of detention dated 01.01.2026 and the order of confirmation dated 16.02.2026 are set aside.

13. The Detenu shall be set at liberty immediately, if he is not required in any other case.

14. Since, we have set aside the order on the ground of non-consideration of the relevant material the bail orders, which was not brought to the notice of the detaining authority, the Principal Secretary to the Government, we provide that the respondent No.2- Principal Secretary to the Government shall be at liberty to pass fresh order but in accordance with law and in case any order of detention is so passed afresh, the period of detention shall not exceed in total 12 months, including the period already served under the impugned detention orders.

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: 28.07.2026
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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
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