

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.15602 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This Writ Petition is filed by the wife of the detenu to declare the order of detention passed by the second respondent dated 24.03.2015, and G.O.Rt.No.1429 dated 21.05.2015 passed by the first respondent confirming the detention order dated 24.03.2015, as illegal and arbitrary. A consequential direction is sought to set the detenue, Sri Sonu @ Manoj Singh, S/o. Kalu Singh, at liberty.

Facts, to the limited extent necessary for the disposal of this Writ Petition, are that the second respondent passed an order of detention on 24.03.2015 detaining Sri Sonu @ Manoj Singh under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggings, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter called Act 1 of 1986). The order of detention was passed on the ground that the detenu was carrying on activities prejudicial to the maintenance of public order, and which were dangerous to life and public health. The order of detention was passed alleging that the detenu was involved in the following eight cases of selling illicit liquor unfit for human consumption and injurious to health:-

- a. Crime No.418 of 2014-15 dated 10.10.2014 of Excise Station, Charminar, Hyderabad.
- b. Crime No.476 of 2014-15 dated 03.11.2014 of Excise Station, Charminar, Hyderabad.
- c. Crime No.601 of 2014-15 dated 24.12.2014 of Excise Station, Charminar, Hyderabad.
- d. Crime No.623 of 2014-15 dated 06.01.2015 of Excise Station, Charminar, Hyderabad.
- e. Crime No.663 of 2014-15 dated 28.01.2015 of Excise Station, Charminar, Hyderabad.
- f. Crime No.694 of 2014-15 dated 12.02.2015 of Excise Station, Charminar, Hyderabad.

- g. Crime No.727 of 2014-15 dated 26.02.2015 of Excise Station, Charminar, Hyderabad.
- h. Crime No.755 of 2014-15 dated 13.03.2015 of Excise Station, Charminar, Hyderabad.

The eight cases registered against the detenu are spread over a period of four months from 10.10.2014 till 13.03.2015. While the detenu was allegedly absconding in the first seven cases, he was arrested in the eighth case i.e., in Crime No.755 of 2014-15 dated 13.03.2015 of Excise Station, Charminar, Hyderabad, and was remanded to judicial custody. The second respondent passed an order of detention, while the detenu was in judicial custody, recording her satisfaction that recourse to the normal legal procedure would involve more time which would not be an effective deterrent to prevent him from indulging in further prejudicial activities; she was aware that the detenu was in judicial remand in Central Prison, Chenchalguda; and that he was likely to commit similar type of offences on coming out on bail. The detenu was informed that he has a right to make a representation to the detaining authority, the Advisory Board, and the first respondent; and that he also had the right to be heard personally, or through a friend, before the Advisory Board. The order of detention was approved by the Government vide G.O.Rt.No.1013 dated 01.04.2015. The matter was referred to the Advisory Board under Section 9 of Act I of 1986 and the Advisory Board reported that there was sufficient cause for detention of the detenu. Thereafter, the first respondent issued G.O.Rt.No.1429 dated 21.05.2015 confirming the order of detention passed by the detaining authority, and directed that the detenu be continued in preventive detention for a period of twelve months from the date of his detention i.e., 26.03.2015.

The order of detention is questioned in this Writ Petition mainly on the ground that there was no material before the detaining authority for arriving at the satisfaction that the detenu was likely to come out on bail. Sri A.Prabhakar Rao, learned counsel for the petitioner, would submit that, after the detenu was arrested on 13.03.2015 and was remanded to judicial custody, he continued to remain in judicial custody even when the detention order was passed i.e., on 24.03.2015; no bail application was filed; as such, the question of the detenu being granted bail, in the eight crimes registered against him, did not arise; even in the absence of any material before her, the detaining authority had recorded her satisfaction that the

detenu was likely to commit similar type of offences after coming out on bail; and the order of detention suffers from non-application of mind.

On the other hand, the learned Government Pleader for Home, appearing on behalf of the respondents, would submit that the satisfaction of the detaining authority cannot be examined in proceedings under Article 226 of the Constitution of India as such satisfaction is subjective; this Court would not substitute its view for that of the detaining authority to decide whether or not the detenu should be detained under Act I of 1986; and the very fact that the detaining authority was aware that the detenu was under judicial custody in Central Prison, Chenchalguda would suffice for her to arrive at the satisfaction that, on coming out on bail, he would commit similar type of offences.

The short question, which arises for consideration in this Writ Petition, is whether the satisfaction of the detaining authority, that the detenu would come out on bail, is supported by any material on record. While the satisfaction of the detaining authority is no doubt subjective, such satisfaction can only be arrived at on the basis of the material on record before her. Satisfaction recorded, in the absence of any material, must be held to suffer from non-application of mind.

In **Rivadeneyta Ricardo Agustin v. Government of Delhi**, the Supreme Court observed as under:-

“In the grounds of detention, the following statement occurs in para 9:

“The Administrator of the National Capital Territory of Delhi is aware that you are in judicial custody and had not moved any bail application in the Court(s) after June 9, 1992 but nothing prevents you from moving bail applications and possibility of your release on bail cannot be ruled out in the near future. **Keeping in view your modus operandi to smuggle gold into India and frequent visits to India, the Administrator of the National Capital Territory of Delhi is satisfied that unless prevented you will continue to engage yourself in prejudicial activities once you are released.**”

The above statement merely speaks of a “possibility” of the detenu’s release in case he moves a bail petition. It neither says that such release was likely or that it was imminent. Evidently, the statement falls short of the requirement enunciated by this Court in **Kamarunnissa v. Union of India** {(1991) 1 SCC 128 : 1991 SCC (Cri) 88}. **Even in the return filed in this petition, the authority has not stated (in response to Ground ‘B’ of the writ petition) that there was material before him upon which he was satisfied that the petitioner was likely to be released or that such release was imminent....”** (emphasis supplied).

Again in **Union of India v. Paul Manickam and Another**, the Supreme Court

held:-

“...So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. **Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc., ordinarily, it is not needed when the detenu is already in custody.** The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. **If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made.** Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See **N.Meera Rani v. Govt. of T.N.** {(1989) 4 SCC 418 : 1989 SCC (Cri) 732 : AIR 1989 SC 2027} and **Dharmendra Suganchand Chelawat v. Union of India** {(1990) 1 SCC 746 : 1990 SCC (Cri) 249 : AIR 1990 SC 1196}). **The point was gone into detail in Kamarunnisa v. Union of India {(1991) 1 SCC 128 : 1991 SCC (Cri) 88 : AIR 1991 SC 1640}. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail....”** (emphasis supplied).

It is evident, therefore, that the satisfaction of the detaining authority, that there was a likelihood of the detenu being released on bail, must be based on cogent material placed before her. It is not in dispute that the detenu was in judicial custody when the order of detention was passed on 24.03.2015. It is not even the case of the respondents that any material was placed before the detaining authority to show that detenu was likely to be released on bail. In the absence of any material on record, to arrive at the satisfaction that the detenu was likely to be released on bail, the order of the detaining authority must be held to suffer from non-application of mind. The order of the detaining authority must, therefore, be set aside.

The Writ Petition is allowed, the order of the detaining authority is quashed,

and the detenu shall be set at liberty if he is not required to be detained in any other case/cases registered against him. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand disposed of.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

27th November 2015

Note: Issue CC by Tuesday

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