

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.33966 of 2015

% 07.6.2016

Between:

K.Anju,

W/o Hanumantha Rao

..... Petitioner

And:

\$ The State of Telangana, repled by its Chief
Secretary, General Administrative Department,
Hyderabad and another.

.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner: Sri Mr. Challa Dhanamjaya

^ Counsel for the Respondents: GP for Home (TS)

? Cases Referred:

2003(8) SCC 342

2011(5) SCC 244

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
*FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH*

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W/o Hanumantha Rao

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JUDGMENT PRONOUNCED ON 07.6.2016

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the
Judgment?
Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? :
Yes/No

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : Yes/No

CVNR, J

GSP, J

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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Counsel for the petitioner: Mr. Challa Dhanamjaya

Counsel for the Respondents: GP for Home (TS)

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed for issue of a Writ of *Habeas Corpus* for release of K.Hanumantha Rao-the detenu by setting aside order, dated 06.8.2015, in SB(I)No.451/PD/S-1/2015, of respondent No.2.

A perusal of the record shows that the detenu was detained under the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of

1986) on the ground that as many as 11 cases were registered against him in connection with his activity of being a bootlegger.

Mr. Challa Dhanamjaya, learned counsel for the petitioner-who is the wife of the detenu, submitted that the detenu was not arrested till the 11th case was registered against him and that, he was arrested for the first time on 27.7.2015. He has further submitted that even by the time, the impugned order of detention was passed on 06.8.2015, the detenu has not even applied for bail and that the apprehension, on which the detenu was detained, viz., that there is a likelihood of the detenu coming out on bail and committing further offences, is without any basis.

In support of his submission, learned counsel placed reliance on the judgments of the Supreme Court in ***Union of India Vs. Paul Manickam and another***^[1] and ***Rekha Vs. State of Tamilnadu and another***^[2].

In Paul Manickam (1 supra), the Supreme Court by holding that subsisting custody of the detenu by itself does not invalidate the order of his preventive detention, however, struck a note of caution that ordinarily, preventive detention is not needed when detenu is already in custody and that the detaining authority must show his awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. It was further held that 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.

In ***Rekha*** (2 supra), the Supreme Court has reiterated the view in ***Paul Manickam*** (1 supra) and held that the detention order must be based on the reasonable possibility of release of a person in jail, who is already in

custody, provided, he has moved a bail application which is pending and that, it follows logically that if no bail application is pending, then there is no likelihood of the person being released on bail and hence, the detention order will be illegal.

In the present case, the petitioner has specifically pleaded that no application for bail was moved on behalf of the detenu and this plea has not been denied by the State.

In the light of this fact and the legal position as explained above, we are of the opinion that the preventive detention of the detenu, who was already in judicial custody, in the absence of any reasonable possibility of his being released on bail, was wholly unwarranted and illegal.

Accordingly, the impugned detention order is set aside with the direction that the detenu shall be released.

The Writ Petition is, accordingly, allowed.

As a sequel to disposal of the Writ Petition, WPMP.Nos.49772 and 49774 of 2015 filed by the petitioner are disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

07th June 2016

Note:

LR copies to be marked.

B/o

DR

[\[1\]](#) 2003(8) SCC 342

[\[2\]](#) 2011(5) SCC 244