

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.14492 of 2016

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner seeks a writ of habeas corpus to release Kunchala Amarnath @ Amar, who was subjected to preventive detention under order dated 09.01.2016 passed by the Commissioner of Police, Hyderabad City, the 2nd respondent, in exercise of power under sub-section (2) of Section 3 of the Telangana Prevention of Dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. The said detention was confirmed by the Government of Telangana under G.O.Rt.No.691, General Administration (Law & Order) Department, dated 19.03.2016, and extended for twelve months from the date of his actual detention, 11.01.2016.

Though various grounds are sought to be urged by Sri V.R. Machavaram, learned counsel for the petitioner, in support of his attack against the impugned detention of the detenu, Kunchala Amarnath @Amar, we are of the opinion that the matter is amenable to resolution on a short ground and adjudication is not required on all the various aspects sought to be urged before us.

Perusal of the grounds of detention dated 09.01.2016 reflects that the detaining authority, the 2nd respondent herein, relied upon the involvement of the detenu, Kunchala Amarnath @Amar, in three crimes – Crime No.84 of 2015 on the file of Bollaram Police Station, Crime No.162 of 2015 on the file of Trimulgherry Police Station and Crime No.259 of 215 on the file of Ramgopalpet Police Station. He further

referred to 11 cases in relation to which the detenu, Kunchala Amarnath @Amar, had suffered remand to judicial custody. Dealing with the bail petitions filed by the detenu in the said cases, the detaining authority specifically stated that insofar as Crime No.535 of 2015 on the file of Medchal Police Station is concerned, the bail petition filed on 04.01.2016 before the learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, was pending for orders. Significantly, in relation to Crime No.84 of 2015 on the file of Bollaram Police Station, Crime No.162 of 2015 on the file of Trimulgherry Police Station and Crime No.259 of 2015 on the file of Ramgopalpet Police Station, the detaining authority referred to dismissal of the bail petitions filed in relation therewith by the Court on 07.01.2016. As pointed out earlier, the order of detention and its supporting grounds of detention are dated 09.01.2016.

Learned Government Pleader for Home fairly conceded that the order dated 07.01.2016 passed by the Court dismissing the bail petition in Crime No.535 of 2015 was available in the material supplied to the detaining authority and was in-fact made part of the material supplied to the detenu thereafter. Perusal of the said material reflects that the docket in CrI.M.P.No.7 of 2016 in Crime No.535 of 2015 on the file of the Metropolitan Magistrate, Cyberabad at Malkajgiri, was also part thereof. On the said docket a hand written endorsement was made by the judicial officer to the effect that the charge sheet had not been filed; investigation was not completed; and no change of circumstances were seen. The petition was accordingly dismissed. In the body of the order of detention also, the detaining authority specifically noted that the latest bail petitions were pending for consideration of the Court. Significantly, in none of the 11 cases cited by him, bail petitions were still pending except in relation with Crime No.535 of 2015. That being

so, the only inference that can be drawn is that the detaining authority did not even go through the material supplied to him by the sponsoring authority to subjectively satisfy himself that the detention of the detenu was warranted in the interest of public order. When the detaining authority was exercising 'suspicion jurisdiction' in relation to a preventive detention law, it was incumbent upon him to apply his mind independently to the material so as to form the requisite 'subjective satisfaction' in this regard. There can be no delegation of such application of mind when the detaining authority is himself required to discharge this weighty responsibility in terms of the Statute and the constitutional obligation visited on him under Article 22.

As in the present case we find reason to suspect that the detaining authority did not independently go through the material supplied to him and merely relied upon the recommendation of the sponsoring authority, we are left with no option but to hold that the detention of the detenu, Kunchala Amarnath @ Amar, is vitiated on this ground.

Learned Government Pleader would rely upon *Gurdev Singh v. Union of India and others*¹ wherein the Supreme Court observed that whether the detention order suffers from non application of mind by the detaining authority is not a matter to be examined according to any straitjacket formula or set principles. The Supreme Court further observed that it would depend upon the facts and circumstances of the case, the nature of the activities alleged against the detenu, the materials collected in support of such allegations, the propensity and potentiality of the detenu in indulging in such activity etc. We are of the opinion that this judgment is of no assistance to the State as the non

¹ (2002)1 SCC 545

application of mind by the detaining authority in the afore-stated decision is in relation to the subject matter underlying the detention whereas we are constrained to hold at the very threshold that the detaining authority in this case did not even independently apply its mind to the material placed before it by the sponsoring authority as is evident from the fact that the detaining authority was not aware of the contents of such material.

The other decision cited by the learned Government pleader in *Abdul Sathar Ibrahim Manik v. Union of India*² is also of no avail to him as the said decision related to non application of mind by the detaining authority in the context of the bail orders and bail petitions which had either been referred to or relied upon. The issue before us being altogether different, this judgment is wholly irrelevant.

On the above analysis, the Writ Petition is allowed setting aside the detention order dated 09.01.2016 passed by the Commissioner of Police, Hyderabad City, in relation to Kunchala Amarnath @ Amar, and also the consequential confirmation *vide* G.O.Pt.No.691, dated 19.03.2016. The detenu, Kunchala Amarnath @ Amar, shall be set at liberty forthwith unless his confinement is required in relation to any other case.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

27.09.2016
Vjl

² (1992) 1 SCC 1