

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.38115 OF 2015

DATED: 14-06-2016

Between:

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Smt. Maruthi Aruna.

Petitioner

And

The State of Andhra Pradesh,,
Rep. by its Principal Secretary,
Agricultural and Marketing Department,
Secretariat, Hyderabad
and three others.

Respondents

COUNSEL FOR THE PETITIONER : Mr. P. Venkata Rao

COUNSEL FOR THE RESPONDENTS : Advocate General (TS)

THE COURT MADE THE FOLLOWING:

ORDER:

The detention of Maruthi Veera Babu @ Babu @ Shekar is questioned by his wife in the present Writ Petition, wherein she sought for a Writ of *Habeas Corpus* for setting aside the detention order dated 05.07.2015 as approved *vide* G.O.Rt. No.2083, General Administration (Law and Order) Department, dated 25.07.2015 and confirmed *vide* G.O.Rt. No.2437, General Administration (Law and Order) Department, dated 01.09.2015 by Respondent No.1.

A perusal of the impugned detention order shows that the detention was made on the ground that the detenu was involved in the activity of immoral traffic by running a brothel. Though he was allegedly involved in three criminal cases, in addition to the said activity, the grounds of detention refer to only two cases, both pertaining to the year 2015. One of the grounds on which the detention order is challenged is that the detenu is in judicial custody in connection with both the criminal cases, namely; Crime No.656 of 2011 and 705 of 2015 and that, as he has not even applied for bail, the satisfaction arrived at by the detaining authority, that there is a genuine possibility of the detenu being released on bail is contrary to The Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act') and, hence, the same is not sustainable.

The Supreme Court has held that before passing the order of

detention, the detaining authority must be cautious and apply its mind as to whether the accused is in judicial custody or not and, in the former event, he must assess the reasonable possibility of the detenu coming out on bail and that in a case where the detenu in judicial custody has not made any application for bail, ordinarily the detaining authority cannot reach the conclusion that there is a reasonable possibility of the detenu obtaining bail. (See ***Union of India Vs. Paul Manickam and another***^[1] and ***Rekha Vs. State of Tamil Nadu***^[2])

Therefore, if the detenu has not applied for bail, as pleaded by the petitioner, which is not controverted by the respondents, the detention on the apprehension that there is a genuine possibility of the detenu being released on bail cannot be sustained.

Furthermore, a perusal of the detention order shows that the detaining authority did not make proper application of mind as evident from the following paragraph:

“I am aware that you were arrested on 28.06.2015 in Cr.No.492 of 2015 of Panjagutta PS and remanded to judicial custody. You are still in judicial custody in Cr.Nos.656/2011, 705/2015 of Banjara Hills PS and 492/2015 of Panjagutta PS. As, you have come out on bail and may indulge in similar offences, I apprehend that there is a genuine possibility of your release on bail and further on being released you would further indulge in the similar activities which are prejudicial to maintenance of public order.”

If we divide the above mentioned paragraph into three parts, in the first part a statement is made that the detenu is still in judicial custody; in the second part, it is stated that the detenu has come out on bail; and under the third part, it is expressed that there is a genuine possibility of detenu being released on bail and that, on such release, he would further indulge in similar activities. Though the learned

Government Pleader for Home (TS), has sought to explain away the apparent contradictions contained in the above quoted paragraph of the detention order, we cannot accept this explanation, for, the detention order deals with the personal liberty of a citizen and it must be strictly construed without any substitution, supplies or supplementaries. As the detention order is self contradictory in its plain language, the same is liable to be set-aside on this ground alone.

For the above mentioned reasons, the impugned detention order, as approved and confirmed, cannot be sustained and the same is, accordingly, set-aside. The detenu is directed to be released forthwith.

The Writ Petition is, accordingly, allowed.

REDDY, J

C.V. NAGARJUNA

Date: 14-06-2016
DSH

G. SHYAM PRASAD, J

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WRIT PETITION No.38115 OF 2015

(Order of the Division Bench delivered by
Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Date. 14-06-2016

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

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