

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

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

W.P.No. 661 OF 2016

DATED 21ST JUNE, 2016

Between:

Chotu Singh ... Petitioner

AND

The State of Telangana,
Rep. by its Chief Secretary to the Government,
General Administration (Law & Order) Department,
Secretariat, Hyderabad, and another ... Respondents

Counsel for the petitioner : Sri Ch.Dhanamjaya

Counsel for the respondents : G.P. for Home (T.S.)

THE COURT MADE THE FOLLOWING

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

Detention of one Beerender Singh (hereinafter referred to as 'the

detenu') by respondent No. 2 under the provisions of Section 3 (1) read with Sections 2 (a) and (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act of 1986'), as confirmed by G.O.Rt.No. 2990 dated 10-11-2015 by respondent No. 1, is under challenge in this Writ Petition. The son of the detenu, who is the petitioner in this Writ Petition, sought for quashing of the above mentioned orders.

2. In support of the Writ Petition, the son of the detenu has filed an affidavit, wherein he has *inter alia* stated that his father was arrested on 01-09-2015 in connection with the four offences referred to in the grounds of detention by respondent No. 2 and the detenu was sent for judicial remand and that, within four days thereafter, his father was detained, but respondent No. 2 has not taken into consideration the said fact.

3. Learned Government Pleader for Home (T.S.) has not disputed the fact that neither the order of detention nor its confirmation referred to the fact of arrest of the detenu and his judicial custody by the time he was detained under detention order dated 05-09-2015.

4. A perusal of the detention order completely supports the plea of the petitioner referred to above. Under Section 3 of the Act of 1986, the Government or its functionaries, in whose favour power is delegated, can exercise the power of detention only where they are satisfied that in order to prevent any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber from acting in any manner prejudicial to the maintenance of public order. In ***N.Meera Rani Vs. Government of Tamil Nadu***^[1], after considering the relevant case law, the Supreme Court summarized the principle as under:

"We may summarize and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention

*and the decision 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 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; but, even so, if the detaining authority is reasonably satisfied on cogent material 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 even in anticipation to operate on his release. This appears to us, to be the correct legal position.***

(Emphasis added)

From the above reproduced portion of the judgment, it is clear that subsisting custody of the detenu by itself does not invalidate an order of the preventive detention and that if the detaining authority shows its awareness to the fact of subsisting custody and likelihood of his release, a detention order could be validly made to prevent the offender from indulging in his activities which are likely to be prejudicial to the public order. In that case, the Supreme Court has quashed the detention order on the ground that though the detention order read with its annexures indicate the detaining authority's awareness of the fact of detenu's jail custody at the time of making of the detention order, there is no indication in the order that the detaining authority considered it likely that the detenu could be released on bail. In ***Rekha Vs. State of Tamil Nadu and another***^[2], the Supreme Court followed this *dicta*. As, admittedly, respondent No. 2 has failed to take notice of the fact that the detenu was arrested on 01-09-2015 and he was under judicial remand, we are of the opinion that the impugned order of detention suffers from serious non-application of mind. In the absence of proper application of mind, the alleged satisfaction of the detaining authority does not satisfy the requirement of "satisfaction referred to in Section 3 of the Act of 1986".

5. For the above mentioned reasons, the impugned detention order of the respondent No. 2, as confirmed by respondent No. 1, cannot be sustained and the same are, accordingly, quashed.

6. Accordingly, the Writ Petition is allowed.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD,

J.

Date: 21-06-2016.

JSK

[\[1\]](#) (1989) 4 SCC 418

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