

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 32565 OF 2015

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ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

A Writ of *Habeas Corpus* is sought to quash the order of detention dated 24-08-2015, passed by the 3rd respondent, detaining Sri Bathula Krishna, S/o Bathula Yellaiah, R/o Hanumanthunigadda Village of Mahaboobabad Mandal, Warangal District in the State of Telangana, under Sections 3 (1) and 3 (2) read with Section 2 (a) and 2 (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 ("the Act" for short).

While several grounds are urged in challenge to the order of detention, it would suffice to note the contention that, when the order of detention was passed, the detenu was still in judicial custody and, as the impugned order does not reflect awareness of the detaining authority to the fact that the detenu was in judicial custody, his satisfaction, regarding the need to detain the detenu in preventive custody, is vitiated.

While the impugned order of detention was passed on 24-08-2015, it is evident from the order passed by the Additional Judicial First Class Magistrate, Mahaboobabad, in Cr.B.P.No. 258 of 2015 in C.O.R.No. 445/2015-2016 dated 21-08-2015 that the detenu was in judicial custody from 19-08-2015 and it was only on 25-08-2015 that he was enlarged on bail on executing a personal bond for Rs.10,000/- with two sureties for a like sum each. When the detaining authority passed the order of detention on 24-08-2015, the detenu was in judicial custody and it is only the next day *i.e.* 25-08-2015 that he was enlarged on bail.

The detaining authority must show its awareness of the subsisting custody of the detenu, and take that factor into account while making the order. If the detaining authority is reasonably satisfied, with cogent material, that there is a 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 (***Union of India Vs. Paul Manickam***^[1]). Factors, such as the detenu being in jail, must be objectively considered. If there are causal connections, and if a *bona fide* belief is formed, then there is nothing to prevent an order of preventive detention being served on a person who is in jail, provided the detaining authority is satisfied that there is an imminent possibility of his being released and set at liberty (***Suraj Pal Sahu Vs. State of Maharashtra***^[2]).

Before an authority can legitimately come to the conclusion that the detention of a person is necessary, to prevent him from acting in a prejudicial manner, the authority must be satisfied that, if the person is not detained, he would act in a prejudicial manner, and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail, it cannot be rationally postulated that, if he is not detained, he would act in a prejudicial manner. At the point of time, when an order of detention is to be served on a person, it must be patent that the said person would act prejudicially if he is not detained, and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person, for the purpose of preventing him from acting in a prejudicial manner, is the basis of the order of detention (***Rameshwar Shaw Vs. District Magistrate, Burdwan; Jotha Viswanadh Vs. Chief Secretary, Government of A.P.***). As preventive detention is intended to prevent a detenu from acting in any manner prejudicial to public order, ordinarily it need not be resorted to

if the detenu is in custody unless the detaining authority has reason to believe that the subsisting custody of the detenu may soon terminate on his being released on bail, and having regard to his recent antecedents he is likely to indulge in similar prejudicial activities, unless he is prevented from doing so by an appropriate order of preventive detention (***N.Meera Rani Vs. State of Tamil Nadu***; ***Kamarunnissa Vs. Union of India***^[3]).

In case the detenu is already in custody, the detaining authority should apply his mind and show his awareness in this regard in the grounds of detention. The necessity of keeping such person under preventive detention should be clearly indicated (***Paul Manickam***¹; ***Yumman Ongbi Lembi Leima Vs. State of Manipur***^[4]). The detaining authority must be aware, when he is passing the order of detention, that the detenu is in custody, and that cogent and relevant material disclose the necessity for making an order of detention (***Binod Singh Vs. District Magistrate, Dhanbad***^[5]; ***Ramesh Yadav Vs. District Magistrate, Etah Munagala Yadamma***^[6]; ***Vijay Narain Singh Vs. State of Bihar***^[7]; ***Dharmendra Suganchand Chelawat Vs. Union of India***^[8]; ***Kamarunnissa***³; ***Abdul Razak Abdul Wahab Sheikh Vs. S.N.Sinha, Commissioner of Police***).

Where the concerned person is in jail, at the time when an order of detention is passed against him, and is not likely to be released for a fair length of time, it may be possible to contend that there can be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise public order (***Haradhan Saha Vs. State of West Bengal***^[9]; ***The Secretary to Government Vs. Nabila***^[10]), and the power of preventive detention should not be exercised. If there is no indication that the *factum*, of the order of detention having been served upon the detenu

when he was in jail or the detenu might be released or there is a possibility of his release, was taken into consideration by the detaining authority properly and seriously before service of the order, the detention order is rendered invalid (***Binod Singh⁵; Meena Jayendra Thakur Vs. Union of India***^[11]). The detaining authority must be reasonably satisfied, with cogent material, that there is a likelihood of the detenu's 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 (***Paul Manickam¹; Yumman Ongbi Lembi Leima⁴***). 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 (***Paul Manickam¹***). If the grounds of detention do not show awareness of this fact, the detention order would suffer from non-application of mind, and would be vitiated thereby (***M.Ahamedkutty Vs. Union of India***).

As the satisfaction of the detaining authority, of the need to detain the detenu in preventive custody, is vitiated by his ignorance of the detenu already being in judicial custody on the date when he passed the order of detention, the impugned orders must be, and are, accordingly, quashed. The detenu is set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him.

Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 01st February, 2016.

Note:

Issue C.C. by Thursday.

B/O

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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W.P.No. 32565 OF 2015
*(Order of the Division Bench delivered by
Hon'ble Sri Justice Ramesh Ranganathan)*

DATE: 01ST FEBRUARY, 2016

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

- [\[2\]](#) (1986) 4 SCC 378
- [\[3\]](#) (1991) 1 SCC 128
- [\[4\]](#) (2012) 2 SCC 176
- [\[5\]](#) (1986) 4 SCC 416
- [\[6\]](#) (2012) 2 SCC 386
- [\[7\]](#) (1984) 3 SCC 14
- [\[8\]](#) (1990) 1 SCC 746
- [\[9\]](#) (1975) 3 SCC 198
- [\[10\]](#) 2015 (1) ALT (CrI.) 385 (SC)
- [\[11\]](#) (1999) 8 SCC 177