

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.25495 of 2016

DATED:- 29-11-2016

Between:

Devalla Chinnamma

..... PETITIONER

AND

The State of Andhra Pradesh, rep.by its Chief Secretary,
General Administration (Law & Order) Department,
Hyderabad and 3 others

.....RESPONDENTS

COUNSEL FOR THE PETITIONER : Sri D.KODANDARAMI REDDY

COUNSEL FOR RESPONDENTS : Sri C.S.SURYA PRAKASH RAO
Spl. G.P (AP)



THE COURT MADE THE FOLLOWING:

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

* * * *

WRIT PETITION No.25495 of 2016

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Devalla Chinnamma

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The State of Andhra Pradesh, rep.by its Chief Secretary,
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.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 29.11.2016

SUBMITTED FOR APPROVAL:

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

* THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

+ WRIT PETITION No.25495 of 2016

% 29.11.2016

Devalla Chinnamma

...Petitioner

Versus

\$ The State of Andhra Pradesh, rep.by its Chief Secretary,
General Administration (Law & Order)Department,
Hyderabad and 3 others

....Respondents

! Counsel for the Petitioner: Sri D.KODANDARAMI REDDY

^ Counsel for the Respondents: Sri C.S.SURYA PRAKASH RAO
Spl. G.P (AP)

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> Head Note:

? Cases Referred:

1. (2003) 8 SCC 342
2. (2011) 5 SCC 244



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT PETITION No.25495 of 2016

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

This writ petition is filed for issue of habeas corpus for the release of one Devalla Rajesh @ Bangi (hereinafter referred to as "the detenu"), son of the petitioner, from detention, by setting aside detention order of respondent No.2, dated 30.04.2016.

2. We have heard the learned counsel for the petitioner and the learned Spl.Govt.Pleader (AP).

3. The detenu, allegedly a notorious criminal, was detained by order dated 30.04.2016 of respondent No.2. The grounds of detention referred to as many as 7 criminal cases. The petitioner pleaded that before the detention order was passed, the detenu was in judicial custody in connection with all 7 criminal cases, referred to in the detention order.

4. The learned counsel for the petitioner submitted that neither the fact of filing charge sheet was mentioned in the detention order nor material relating thereto was supplied to the detenu. More formidable objection raised on behalf of the detenu is that the detaining authority has not recorded his awareness to the fact of subsisting judicial custody of the detenu and also apprehension that there is a likelihood of the detenu being released on bail.

5. No doubt, in connection with 7 criminal cases, the detenu is still in judicial custody. However, respondent No.2 did not mention in the

detention order as to either the detenu applied for bail or that there is likelihood of his release on bail.

6. In *Union of India v. Paul Manickam and another*¹ the Hon'ble Supreme court while 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 who was already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. In *Rekha v. State of Tamilnadu and another*² the Hon'ble Supreme Court reiterated the view taken 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.

7. In the instant case, it is not in dispute that the detenu was in judicial custody in connection with 7 criminal cases. Though respondent No.2 has referred to the fact that the detenu was in judicial custody in 7 criminal cases, he has failed to advert to the aspect as to whether any bail application has been moved by the detenu and there is a likelihood of his

¹ (2003) 8 SCC 342

² (2011) 5 SCC 244

release on bail in the near future. In the absence of recording of the satisfaction of the detaining authority on these aspects, the impugned detention cannot be sustained.

8. We find yet another incongruity in the impugned detention order. Having stated that the detenu is in judicial custody in connection with all 7 criminal cases, in his grounds of detention, respondent No.2 has stated as under:

“The following are the cases in which he was involved in proximity of time and he is absconding by avoiding police arrest.”

(Emphasis added)

This statement contained in the grounds of detention is in direct conflict with the statement contained in all 7 grounds that the detenu is under judicial custody in connection with all the 7 cases. This shows a complete non-application of mind on the part of respondent No.2 while passing the impugned detention order.

9. For the aforementioned reasons, the writ petition is allowed and the impugned detention order is set aside.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 29.11.2016
Dsr

Note:
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