

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION NO.4948 OF 2016

DATED:29-06-2016

Between:

M. Ram ... Petitioner

And

State of Telangana
Rep. by its Principal Secretary
Home Department
Secretariat
Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. C. Sharan Reddy

COUNSEL FOR THE RESPONDENTS: G.P. for Home (TS)

-

THE COURT MADE THE FOLLOWING:

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

This writ petition is filed seeking quashing order dt.31.12.2015 of respondent No.2, ordering detention of one Mr. Arun, S/o. Srihari, resident of Karvan, Hyderabad District (for short, 'the detenu'), by one Mr. Ram, cousin of the detenu.

A perusal of the detention order no doubt shows that the detenu appears to be a habitual offender indulging in sale of illicitly distilled liquor. The fact that there were as many as twenty eight old cases besides six cases mentioned in the grounds of detention bears ample testimony of the habitual nature of the petitioner in committing the offences repeatedly. However, Mr. C. Sharan Reddy, learned counsel for the detenu, submitted at the hearing that the order of detention discloses non-application of mind on the part of respondent No.2, in that though the detenu was under judicial remand in connection with FIR. No.225 of 2015, dt.25.12.2015, which fact was mentioned under ground No.6 of the grounds of detention, respondent No.2 has not recorded satisfaction that there is a possibility of the detenu coming out of the detention and that in such an event he is likely to commit further offences which may affect the public order. This submission is not disputed by the learned Government Pleader for Home (TS).

In *N. Meera Rani v. Government of Tamil Nadu*^[1], after considering the case law on the subject, the Supreme Court summarized the principle as under:

*"We may summarise 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)

In *Sunila Jain v. Union of India and another*^[2], after referring to the earlier judgments in *M. Ahamedkutty v. Union of India and another*^[3] and *P.U. Abdul Rahiman v. Union of India*^[4] the Supreme Court observed that whether a detenu on the date of passing of the order of detention was in custody or not would be a relevant fact and that it would also be a relevant fact whether he is free on that date and if he is, whether he is subjected to certain conditions pursuant to and in furtherance of the order of bail. The Court has applied the following twin-tests to know whether the constitutional mandate in the matter of preventive detention is in violation, namely (i) whether the impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (ii) whether relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority.

If the detenu is under judicial remand, he is not expected to continue the offences so long as he is not released from the judicial custody. Therefore, it is imperative for the detaining authority to consider whether there is a likelihood of the detenu being released from judicial custody and whether in such an event he is likely to repeat the offences. In our opinion, unless these aspects are considered and weighed with the detaining authority, the detention order does not stand judicial scrutiny, as, such an order discloses total non-application of mind. The detention law being an exception to Articles 19 and 21 of the Constitution of India, the detention order is liable for strict scrutiny and any lapse on the part of the detaining authority in conforming to the requirements of procedural safeguards,

would render the detention order invalid (See *Ram Manohar Lohia v. State of Bihar*^[5]). Inasmuch as the fact of the detenu being under judicial remand having been noticed, respondent No.2 has failed to record satisfaction that there is a reasonable possibility of the detenu coming out of the judicial remand and repeat the offences which may disturb public order, the impugned detention order cannot be sustained.

For the above mentioned reasons, the writ petition is allowed and the impugned detention order is set aside. The detenu shall be released from the detention forthwith.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

29-06-2016

bnr

Note: LR copies to be marked.

(B.O)

bnr

^[1] (1989) 4 SCC 418

^[2] (2006) 3 SCC 321

^[3] (1990) 2 SCC 1

^[4] 1991 Supp. (2) SCC 274

^[5] AIR 1966 SC 740