

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

WRIT PETITION NO.12224 OF 2016

O R D E R

(per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the wife of Guguloth Shankar who is presently detained at the Central Prison, Warangal, in relation to the detention order dated 08.01.2016 passed by the Collector and District Magistrate, Khammam, in exercise of power under Sections 3(1) & (2) read with Sections 2(a) & (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (*hereinafter*, 'the Act of 1986'). The said detention was approved by the Government of Telangana under G.O.Rt.No.121, General Administration (Law & Order) Department, dated 19.01.2016 as required by the Act of 1986. By G.O.Rt.No.694, General Administration (Law & Order) Department, dated 19.03.2016, the Government of Telangana confirmed the said detention and directed its extension for a period of 12 months from the date of commencement of the detention, 09.01.2016. The subject detention order dated 08.01.2016 and its confirmation under G.O.Rt.No.694 dated 19.03.2016 are challenged by the petitioner.

Though Kollu Rajasekhar, learned counsel for the petitioner, would raise various grounds in support of his attack against the subject detention, we are of the opinion that no adjudication is warranted on merits on all aspects arising for consideration in this case, as the matter is amenable to resolution on a short ground.

It is a settled proposition of law that a detaining authority under the Act of 1986 exercises 'suspicion jurisdiction' and subjects the person concerned to detention for an extended period of time without following the ordinary due process of law. That being so, the subjective satisfaction arrived at by the detaining authority in relation to the proposed detention would necessarily have to be based on proper application of mind to all the relevant material. It is not open to this Court to sit in appeal over such subjective satisfaction or assess the sufficiency and adequacy of the grounds of detention which form the foundation for the order of detention. However, this Court, being the *sentinel on the qui vive*, would zealously guard against any constitutional transgressions or violations by the detaining authority in exercise of 'suspicion jurisdiction' under the Act of 1986. In the event this Court finds that the detaining authority has not applied its mind to relevant material or did so improperly, the order of detention would have to be invalidated on that short ground.

In the present case, the detaining authority, the Collector and District Magistrate, Khammam, relied upon seven criminal cases in which the petitioner's husband was involved. In the context of one such crime, being COR No.415/2015-16, the detaining authority stated as under:

'You are under judicial remand being lodged at Sub-Jail: Yellandu in crime No: 415/2015-16, Dated 27.12.2015 of Prohibition and Excise Station: Yellandu. In the said case bail petition was moved and it is pending before the Hon'ble Court. There is no denying the fact that you may be enlarged on bail at any moment and surely your illegal and reprehensible activities would be continued at the cost of public health and

order, if you are not reined in. It is also very difficult to nab you once you are out on bail as per your crime record.'

Sri Kollu Rajasekhar, learned counsel, contended that though the detaining authority stated to the effect that a bail petition was moved and was pending in relation to COR No.415/2015-16, no such material was placed before it as is evident from the fact that the relevant material relied upon by the detaining authority, which was supplied to the detenu, did not contain a copy of the bail petition.

As this crucial aspect reflects upon the extent of application of mind by the detaining authority to the relevant material placed before it, the learned Government Pleader for Home, State of Telangana, was directed to verify and produce before this Court the relevant record. The learned Government Pleader thereupon placed before us copies of the bail petition moved in COR No.415/2015-16 and the orders passed thereon by the learned Judicial First Class Magistrate, Yellandu. However, when asked whether such a bail petition was pending as on the date of passing of the detention order on 08.01.2016 and as to whether a copy thereof was placed before the detaining authority, the learned Government Pleader fairly conceded that no such bail petition was available in the original record of the detaining authority.

In this context, it was also noticed that the grounds of detention referred to various bail orders secured by the detenu in relation to other cases and the learned Government Pleader was asked whether such bail orders at least were available in the original file of the detaining authority. The learned Government Pleader fairly conceded that no such bail orders were available in the said file.

Given the aforesaid facts, this Court is left with no option but to infer that the detaining authority did not even choose to go through the relevant material placed before it and blindly accepted and acted upon the recommendation of the sponsoring authority, wherein reference was made to various bail orders and bail petitions without furnishing copies thereof. It is a settled legal position that the detaining authority, while exercising 'suspicion jurisdiction' in relation to preventive detention law, mandatorily has to apply its mind to all the relevant material and arrive at an informed subjective satisfaction. Merely accepting and acting upon the recommendation made by the sponsoring authority without independent application of mind to all the relevant material would be demonstrative of abdication of the constitutional responsibility visited upon the detaining authority in this regard.

In the present case, we are constrained to hold that the detaining authority failed on this count, as the reliance placed by it in the grounds of detention upon the pending bail petition in COR No.415/2015-16 without even verifying as to whether such a bail petition was placed before it, clearly manifests total lack of application of mind.

In the light of this pertinent failure on the part of the detaining authority to strictly abide by the constitutional mandate and the statutory requirements of the Act of 1986, we allow the writ petition and set aside the order of detention dated 08.01.2016 which was thereafter confirmed under G.O.Rt.No.694 dated 19.03.2016 in relation to the petitioner's husband, Guguloth Shankar. The detenu, Guguloth Shankar, shall be set at liberty forthwith unless his confinement is required in relation to any other case.

Pending miscellaneous petitions shall stand closed in this light of this order. No order as to costs.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

7th SEPTEMBER, 2016

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