

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION NO.8152 OF 2017

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner seeks a writ of *habeas corpus* directing the respondent authorities to produce her husband, Kollam Gangi Reddy, from Central Prison, Kadapa, Y.S.R.District, so that he may be released forthwith, upon declaring his detention under order dated 20.01.2017 passed by the Collector and District Magistrate, Y.S.R.District, as illegal and unconstitutional.

In exercise of power under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act of 1986'), the District Collector, Y.S.R.District, passed the order of detention dated 20.01.2017 against the petitioner's husband, citing 18 criminal cases in which he was involved as the grounds for detention. The order of detention was approved by the Government of Andhra Pradesh *vide* G.O.Rt.No.176, General Administration (Law & Order) Department, dated 27.01.2017. Thereafter, the Advisory Board constituted under Section 9 of the Act of 1986 reviewed the case and after hearing the detenu and his wife, the petitioner herein, apart from the brother-in-law and father-in-law of the detenu, submitted report dated 23.02.2017 to the Government. Thereupon, the Government of Andhra Pradesh confirmed the detention of the petitioner's husband for a period of 12 months from the date of his detention, i.e., 21.01.2017, *vide* G.O.Rt.No.514, General Administration (Law & Order) Department, dated 07.03.2017.

In the affidavit filed in support of the writ petition, the petitioner stated that the order and the grounds for detention were served upon the detenu in English and Telugu languages. She claimed that her husband could not read or write English language as he only studied up to 8th standard and his only known language was Telugu, which he could read and write. However, some of the material (pages 257 to 262) supplied to him in Telugu language, was illegible. She therefore claimed that her husband could not make a proper representation to the authorities to consider his case for release. She pointed out that the alleged incidents in the 18 cases taken into consideration by the detaining authority took place between 2011 and 2015 and citing the details thereof, she asserted that the order of detention was passed in a mechanical manner without application of mind, relying on stale, vague, irrelevant, extraneous and non-existent grounds. She pointed out that her husband was in jail since 15.11.2015 in connection with Crime No.5/1994 on the file of Mannur Police Station, Y.S.R.District, and was to be released on 25.01.2017, but he would have had to remain in custody in the light of the several other cases registered against him, in which his arrest was yet to be regularized. While so, the detention order was passed on 20.01.2017. She stated that the detaining authority was not made aware of the fact that her husband would continue to remain in judicial custody and no compelling reasons were recorded by the detaining authority justifying the proposed detention, despite the fact that her husband was still in judicial custody.

She also asserted that the order of detention was based on stale incidents, as the cases cited in the grounds were not proximate.

She adverted to the fact that the detention order was dated 20.01.2017 but the last case, in point of time, cited in the grounds was registered on 05.10.2015. She prayed for a declaration that her husband's detention was illegal and sought his immediate release.

While reiterating these points, Sri C.V.Mohan Reddy, learned senior counsel appearing for Smt.B.Mohana Reddy, learned counsel for the petitioner, would contend that the impugned order of detention is liable to be invalidated on three grounds. Firstly, he would argue that on the ground of proximity, detention of the petitioner's husband is rendered illegal as the last case relied upon in the order of detention dated back to October, 2015 whereas the order was passed only in January, 2017. Secondly, he would argue that as the petitioner's husband was already in judicial custody, there was no application of mind to determine whether there was a likelihood of his being released in the near future, before subjecting him to preventive detention. Lastly, the learned senior counsel would contend that the documents at pages 355 to 362 in the material placed before this Court, which were also furnished to the detenu, were incapable of being read and therefore, the constitutional right of the detenu to make an effective representation was prejudiced. He would further point out that the petitioner's husband left the country, apprehending persecution by the State because of his political affiliation, as long back as in May, 2014. He was extradited from Mauritius only on 15.11.2015 and was in judicial custody ever since. While so, 11 out of the 18 cases, that find mention in the grounds for detention, were registered only after he left the country. The learned senior counsel would point out that the District Collector stated in his counter-affidavit that the petitioner's husband

committed these crimes, one after the other, by concealing his presence. He would further point out that the District Collector himself admitted that the petitioner's husband was produced before the learned Judicial First Class Magistrate, Sidhout, through PT warrant on 14.01.2017 and was remanded to judicial custody. Learned senior counsel would therefore conclude by stating that proper application of mind by the detaining authority is lacking as there was no imminent possibility of the detenu coming out of prison.

Opposing these arguments, the learned Advocate General, State of Andhra Pradesh, would point out that neither the petitioner nor the detenu raised any complaint as to illegibility of documents earlier. He would draw attention to para 16 of the counter-affidavit, wherein the District Collector asserted that all the documents provided to the detenu were legible and capable of being read without difficulty. The District Collector further pointed out therein that the detenu submitted his representation to the Advisory Board, and was also heard by it, and asserted that the detenu would not have made a representation to the Board had the material been incapable of being read and understood. He further pointed out that the detenu never submitted any representation to the detaining authority seeking legible copies of any document and for the first time, this ground was urged only now. The learned Advocate General would point out that no reply was filed rebutting the aforestated counter-affidavit averments. He would further submit that the gist of the very same documents was extracted in the order and grounds for detention and therefore, no prejudice was caused to the detenu, in any event. As regards the issue of proximity, the learned Advocate General stated that no hard and fast rule was laid down by the Courts in this regard

and that each case would have to turn on its own individual facts. He would submit that as the petitioner's husband was habitually involved in the felling and smuggling of valuable Red Sanders trees, an endangered timber species, this Court should examine as to whether a pattern in this regard is established and once it is found to be so, the mere fact that there was a break in registration of cases could not be the basis to draw an inference that he had ceased to indulge in such unlawful activities. He would therefore justify the order of detention and seek dismissal of this writ petition.

In reply, Smt.B.Mohana Reddy, learned counsel, would contend that the petitioner's husband has not even been produced before the Court in relation to his detention under several newly registered cases. She would submit that W.P.No.46065 of 2016 was filed in this regard seeking a direction to the authorities to produce him before the Court. She would contend that it is clear that there is no immediate likelihood of the petitioner's husband being enlarged from judicial custody and this aspect of the matter was completely lost sight of by the detaining authority. She would therefore reiterate the prayer for invalidating the order of detention.

Trite to state, this Court would not sit in appeal over the subjective satisfaction on the strength of which the detaining authority passed the order of detention. Similarly, sufficiency or adequacy of material for the detaining authority to form its subjective satisfaction is not within the province of judicial review. This Court would therefore adjudicate upon the validity of such an order only on limited grounds to the extent of ensuring that the constitutional rights of the detenu are not trampled upon and that all procedural safeguards have been scrupulously adhered to.

The District Collector opined in the order of detention that the petitioner's husband had been continuing his unlawful activities, fearlessly entering into the reserved forest and involving himself in illegal felling and smuggling of Red Sanders trees. He also dealt with the 18 cases in which the petitioner's husband was involved at length in the grounds for detention. These 18 cases arose under the provisions of Andhra Pradesh Forest Act, 1967, the Wild Life Protection Act, 1872, the Biological Diversity Act, 2002, the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969, the Prevention of Damage to Public Property Act, 1984 and various provisions falling under Chapters VIII and XVI of the Indian Penal Code, 1860. The District Collector affirmed in his counter-affidavit that having perused the material placed before him, he was sufficiently satisfied that there was every necessity to pass an order of detention against the detenu, so as to prevent him from further indulging in such unlawful activities which disturbed public order.

Coming to the grounds urged by Sri C.V.Mohan Reddy, learned senior counsel, it may be noticed that the petitioner's husband left India in May, 2014. He was brought back to the country after his successful extradition from Mauritius only in August, 2015. However, his active involvement in various forest offences even after he left the country was made out sufficiently warranting his inclusion in the array of accused in 11 cases registered while he was in Mauritius. Therefore, a break in registration of such cases from October, 2015 to January, 2017 may not be sufficient in itself to infer that he had ceased to indulge in such activities. As rightly pointed out by the learned Advocate General, once a pattern is clearly established, the proximity of the order of detention and the last case

or incident relied upon therein would have to be viewed accordingly. Be it noted that in **BHUPENDRA V/s. STATE OF MAHARASHTRA**¹, the Supreme Court noted that the law empowering preventive detention relates to habitual activities of a detenu and therefore, there may be instances which may not be of immediate proximity but may indicate that pattern.

Significantly, in **SMT. REKHABEN VIRENDRA KAPADIA V/s. STATE OF GUJARAT**², the Supreme Court was dealing with a case where there was a time lag from August 1974 to February 1977 and the question was whether this time lag was enough to snap the reasonable nexus between the prejudicial activity and the purpose of detention. Affirming the principle laid down in **GORA V/s. STATE OF WEST BENGAL**³, the Supreme Court observed that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention and the question would be whether the past activities of the detenu are such that the detaining authority can reasonably come to the conclusion that the detenu was likely to continue with his unlawful activities. It was further observed that if the detaining authority came to the conclusion taking into account the past activities of the detenu that he is likely to continue to indulge in such activities in future, there would be no justification for the Court to interfere.

As regards the challenge on the ground that the constitutional right of the detenu to make an effective representation stood negated by the fact that illegible material was provided to him, a copy of the

¹ (2008) 17 SCC 165

² (1979) 2 SCC 566

³ (1975) 2 SCC 14

representation dated 23.02.2017 submitted by the detenu to the Advisory Board was placed before us. No mention was made therein by the detenu that he was prejudicially affected in making a proper representation as he could not read some of the material supplied to him. This Court, being the *sentinel on the qui vive*, would be zealous in ensuring that all procedural safeguards are duly maintained in every individual case of preventive detention. However, when neither the detenu nor his family members raise an issue in this regard at an earlier point of time but take recourse to such a ground only before this Court as an after-thought, so as to take advantage of precedential law, this Court cannot allow the same.

The specific complaint is as to illegibility of the material at pages 355 to 362 of the volumes placed before us. Having perused the said pages, we are of the opinion that the contents thereof are capable of being read, notwithstanding the fact that photocopying of the said documents resulted in the print on the rear of each page showing up on the front also. Merely because the document required some amount of toiling over for it to be read and understood, it did not prejudice the detenu to the extent of violating his constitutional right under Article 22(5). That apart, as already pointed out *supra*, this ground is now raised as an after-thought. Though the petitioner stated in her writ affidavit that this aspect had been raised before the Advisory Board, we do not find it to be so.

In this regard it may be noticed that in ***E.SUBBULAKSHMI V/s. SECRETARY TO GOVERNMENT***⁴, the Supreme Court observed that no grievance had been made about an illegible copy being supplied by the detenu to any authority. No representation was made by the

⁴ 2016 SCC OnLine SC 1313

detenu to any authority in this regard so as to assert that the said document was relied upon and furnishing of an illegible copy thereof to him was fatal. The argument which was advanced before the Court in this regard was therefore rejected.

Similarly, in **MUTHANGI VENKAYAMMA V/s. STATE OF ANDHRA PRADESH**⁵, a Division Bench of this Court observed that when no contention was raised before the detaining authority or the Board as to insufficiency of the material, the contention urged to that effect before the Court did not warrant acceptance. On facts, the Division Bench found that the entire material, in fact, had been furnished to the detenu.

In **YARU KHAN V/s. STATE OF RAJASTHAN**⁶, a Division Bench of the Rajasthan High Court found that no complaint had been raised about the illegibility of any document until filing of a writ petition by raising such a ground nor was any demand made for supply of legible documents so as to enable the detenu to make an effective and appropriate representation and observed that it cannot be said that any prejudice was caused, even if it has to be assumed for the sake of argument that some of the documents may not have been easily readable. As we find the case on hand also to be identical, the same principle would apply.

In **MANJIT SINGH GREWAL ALIAS GOGI V/s. UNION OF INDIA**⁷, the Supreme Court interfered with an order of detention on the ground that copies of the documents supplied were not legible. The position in that regard was found to be apparent. However, as we do not find it to be so in the case on hand and the documents in

⁵ 2010 (2) ALD (Cr.) 744 (AP)

⁶ (2002) 2 RLR 275

⁷ 1990 (Supp) SCC 59

question were capable of being read and understood, this judgment does not advance the case of the petitioner.

In ***VASANTHU SUMALATHA V/s. STATE OF ANDHRA PRADESH REP. BY ITS CHIEF SECRETARY, HYDERABAD***⁸, a Division Bench of this Court interfered with the order of detention on various grounds, one such being that pages in a document supplied to the detenu were illegible. However, the Bench satisfied itself that the pages in question were indeed illegible before proceeding to pass the order. As we do not find it to be so in the case on hand, this judgment also does not aid the petitioner.

As regards the last ground relating to application of mind by the detaining authority in the context of the petitioner's husband being in judicial custody at the time the order of detention was passed, Smt.B.Mohana Reddy, learned counsel, would inform this Court that orders were passed by various Magistrates requiring production of the petitioner's husband on transit warrants and therefore, this factor should have been taken into consideration by the detaining authority as the same indicated that the petitioner's husband would be arrested in relation to each of such registered crimes and there would be no immediate likelihood of his release on bail. However, perusal of the order of detention reflects that the District Collector was well aware of the fact that the petitioner's husband was remanded to judicial custody and that he was lodged at Central Prison, Kadapa, Y.S.R.District, as on the date of passing of the order. Being aware of this aspect and also of the fact that he would still continue in judicial custody, the District Collector thought it fit to subject him to preventive detention. Merely because the

⁸ 2016 (1) ALT 738 (D.B.)

detenu was yet to be shown as having been arrested in several other cases, where he had not yet been produced before the Court, the power of the detaining authority under the Act of 1986 would not stand curtailed. Each case would have to turn upon its own individual facts. In the case on hand, 11 out of the 18 cases registered against the detenu were during his absence from the country. This aspect was also within the knowledge of the detaining authority. Being aware of this crucial aspect, the detaining authority thought it fit to subject the petitioner's husband to an order of detention under the Act of 1986. Application of mind by the detaining authority is therefore adequately demonstrated.

In this regard, reference may be made to **RAMESHWAR SHAW V/s. DISTRICT MAGISTRATE, BURDWAN**⁹, wherein a Constitution Bench observed as under:

‘12. As an abstract proposition of law, there may not be any doubt that Section 3 (1) (a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail..... Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.’

Again, in **N.MEERA RANI V/s. GOVERNMENT OF TAMIL NADU**¹⁰, the Supreme Court observed that a detention order and its annexure must clearly show that the detaining authority was aware and conscious of the fact that the detenu was already in custody at

⁹ AIR 1964 SC 334

¹⁰ (1989) 4 SCC 418

the time of making the detention order. Summarizing the settled principles, the Supreme Court observed that subsisting custody of the detenu by itself would 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 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.

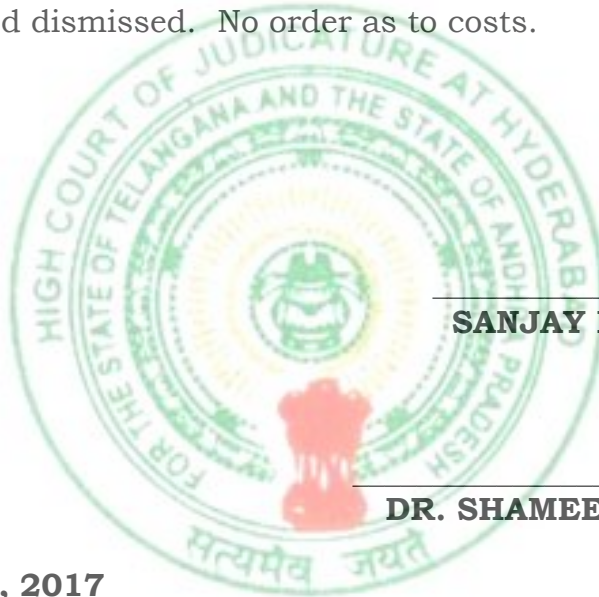
In **T.V.SRAVANAN @ S.A.R. PRASANA VENKATACHARIAR CHATURVEDI V/s. STATE THROUGH SECRETARY¹¹**, the Supreme Court found on facts that there was no imminent chance of the detenu being released on bail and yet the detaining authority, even in the absence of any material to raise an apprehension that he may be released on bail in the near future and continue with his nefarious activities, passed the impugned order of detention. Reference was made to the principle elucidated in **BINOD SINGH V/s. DISTRICT MAGISTRATE, DHANBAD¹²** to the effect that the power of directing preventive detention must be exercised in exceptional cases as contemplated by the statute dealing with preventive detention and

¹¹ (2006) 2 SCC 664

¹² (1986) 4 SCC 416

should be used with circumspection and if a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. This case turned on its own individual facts and no straitjacketed edict can be culled out therefrom that, invariably, in every case where a person is in judicial custody, no order of preventive detention can be passed against him.

In consequence, we are of the opinion that the impugned order of detention does not suffer from any defect. We therefore find no reason to interfere therewith. The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

6th OCTOBER, 2017

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