

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.11282 OF 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner seeks a writ of *habeas corpus* for production of his father, Oruganti Sammaiah @ Kattula Somaiah @ Sampath, so as to set him at liberty by declaring the detention order dated 14.12.2016 passed against him by the Commissioner of Police, Rachakonda Police Commissionerate, Rachakonda, Ranga Reddy District, and the consequential G.O.Rt. No.548 dated 23.02.2017 of the Government of Telangana confirming the detention, as illegal.

The order of detention dated 14.12.2016 passed by the Commissioner of Police, Rachakonda Police Commissionerate, was approved by the Government of Telangana *vide* G.O.Rt. No.2772 dated 23.12.2016 and was then confirmed for a period of 12 months from the date of detention, *i.e.*, 14.12.2016, under G.O.Rt. No.548 dated 23.02.2017.

Sri P. Nagendra Reddy, learned counsel for the petitioner, would contend that the purported subjective satisfaction on which the Commissioner of Police, Rachakonda Police Commissionerate, passed the detention order is tainted as there was no application of mind by the said detaining authority. Learned counsel would point out that the grounds of detention reflect that the detaining authority relied upon 9 criminal cases and in relation to each of them, the detaining authority recorded that the detenu being the accused therein had filed petitions for bail before the Courts and the same were pending. Learned counsel would assert that the detenu never filed any regular bail applications seeking his release

and only anticipatory bail applications were filed in 4 cases namely Crime No.700 of 2016, 698 of 2016, 697 of 2016 and 691 of 2016.

Learned counsel would further inform this Court that all these anticipatory bail applications were dismissed by individual orders dated 15.11.2016 by the learned XIV Additional Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B. Nagar, Hyderabad.

Perusal of the grounds for detention attached to the detention order dated 14.12.2016 demonstrates that in relation to Crime No.691 of 2016, the detaining authority noted that the detenu was arrested in relation to that case on 23.11.2016 and sent to judicial custody and that his petition for bail before the Honourable Court was pending.

Learned Government Pleader would fairly concede that no regular bail petition was filed by the detenu and that by oversight, the word 'anticipatory' was missed out while referring to the bail petitions.

However, we find that in the order of detention, the detaining authority recorded that in the 9 cases registered against the detenu, he had filed bail petitions before the Hon'ble Court and the same were dismissed. This is in direct contravention to what was stated in the grounds for detention wherein, in each case a bail petition was stated to be pending. In any event, the detaining authority did not even refer to the anticipatory bail petitions in 4 cases, which were dismissed on 15.11.2016, nearly a month before the order of detention. The discrepancy in the order of detention and the grounds for detention in this regard therefore leaves us with no alternative but to conclude that there was scant application of mind by the detaining authority before exercise of power under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers,

Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity, 'the Act of 1986').

When the draconian power of detaining a person contrary to the ordinary law of the land is sought to be exercised and the validity of such exercise depends solely on the subjective satisfaction of the detaining authority, a high level of application of mind and responsibility are required to be demonstrated by such authority. In the case on hand, we find the same to be utterly lacking, as the detaining authority did not even know the correct position with regard to the bail applications filed by the detenu. The power under Section 3(2) of the Act of 1986 is not to be exercised in a mechanical and careless fashion as has been done in the case on hand. Therefore, the order of detention dated 14.12.2016 and the consequential approval of the said detention and its confirmation thereafter by the Government of Telangana, are liable to be set-aside on this short ground

The writ petition is, accordingly, allowed setting-aside the order of detention dated 14.12.2016 passed by the Commissioner of Police, Rachakonda Police Commissionerate, Rachakonda, Ranga Reddy District, and the consequential approval and confirmation by the Government of Telangana *vide* G.O.Rt. No.2772 dated 23.12.2016 and G.O.Rt. No.548 dated 23.02.2017. The detenu, Sri Oruganti Sammaiah @ Kattula Somaiah @ Sampath, shall be set at liberty forthwith, unless his detention is required in connection with any other case.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 12-09-2017.
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AND
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(Order of the Division Bench delivered by
Hon'ble Sri Justice Sanjay Kumar)

Date. 12-09-2017

DSH