

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

W.P. No. 19106 of 2017

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the proceedings dated 14.04.2017 issued by the 2nd respondent and the subsequent orders issued by the Government vide G.O.Rt.No.1218, dated 01.06.2017 whereby the detenu has been directed to be kept under preventive detention for a period of 12 months.

The learned counsel for the petitioner submits that the respondents-authorities have relied upon six cases registered against the detenu which are as under:

- 1) Chandragiri P.S., Cr.No. 34/ 2016 u/ s.147, 148, 307, 353, 379, 120(B) r/ w 149 IPC & 120(B) IPC and Sec. 20(i)(c) (X) of A.P. Forest Act, 1967, Rule 3 of A.P. Red Sanders Wood Transit Rules, 1969 and Rule 3 of A.P. Red Sanders Wood Possession Rules, 1989, Sec.51 of Wildlife (Protection) Act, 1967 and Sec.24-A, 24-B and 25(IAAA) of Arms Act, 1959.
- 2) Penigunta (U) P.S Cr.No. 128/ 2016 U/ s.109 & 120(B) IPC and Sec.20(1)(d) of A.P. Forest Act, 1967.
- 3) Chandragiri P.S Cr.No.88/ 2016 U/ s.447, 427, 379 and 120(B) IPC r/ w 411 IPC & Sec. 20(1)(d)(i)(a)(b) r/ w 20(1)(c) ii, iii, iv, vi, x, Sec.29(1)(4)(a)(i)(a)(b), 32(B) of A.P. Forest Act, 1967, Sec.55(2) r/ w Sec.7 of Biological Diversity Act & Sec.3 of P.D.P.P. Act.
- 4) Alipiri P.S Cr.No. 194/ 2016 u/ s.109, 120(b) IPC and Sec.20(1)(d) of A.P.F. Act.
- 5) Alipiri P.S Cr.No. 251/ 2016 U/ s. 447, 379, 120b r/ w 411 IPC & Sec. 20 (1) 4(a)(i)(b) r/ w 20 (1) (e) ii, iii, iv, vi, x, Sec.

29(1)(4)(a)(i) (a) (b), Sec. 32 B of A.P. Forest Act, 1967, Sec. 55(2) r/w Sec. 7 of Biological Diversity Act, 2002 and Sec. 3 of P.D.P.P. Act, 1984.

- 6) Thottambedu P.S Cr.No. 96/ 2016, U/ s.379, 120(B) r/ w 34 and 411 IPC & Sec. 20(I), (d)(i)(a)(b) r/ w 20(1)(c) ii, iii, iv, vi, x, Sec.29(1)(4)(a) (i) (a) (b) of A.P. Forest Act, 1967, Sec. 55(2) of Biological Diversity Act, 2002 & Sec.3 of P.D.P.P. Act, 1984.

The detenu i.e. Kanderi Ayyappa, husband of the petitioner, was first arrested on 24.12.2016 in Cr.No. 96 of 2016 and directed to be released on bail on 12.01.2017 and finally released on bail on 13.01.2017. Thereafter, the detenu reported to the police in compliance with the terms of the bail order, however on the very same day, he was again taken into custody in Cr.No. 128 of 2016 of Renugunta Police Station, and thereafter, remained in judicial custody. As detention order dated 14.04.2017 was passed, he has been in jail since then.

The learned counsel for the petitioner submits that it is not in dispute that the detenu was directed to be released from the jail, however due to non-furnishing of surety bond, he remained in judicial custody till the date of passing the detention order. He further contends that in the grounds of detention, it is specifically mentioned that the detenu is repeatedly committing forest offences involving smuggling of Red Sanders and he has not stopped committing the same type of offences even after cases and charge sheets were filed

against him. This averment in the grounds of detention is contrary to the record. However, the detaining authority, having got influenced by the aforesaid averment, observed that despite cases have been registered and charge sheets filed against the detenu, he continued in similar activities.

To this effect, the 2nd respondent – detaining authority has filed counter affidavit *inter alia* stating that while passing the detention order indicating grounds thereof, an inadvertent mistake crept in the grounds of detention that charge sheets were filed in the cases registered against the detenu. He perused all the documents placed before him by the sponsoring authority, which did not contain charge sheets and after arriving at his subjective satisfaction that there exist grounds for the detention of the detenu, he passed the impugned order of detention.

It is pertinent to mention here that in paragraph No. 48 of the counter affidavit, again it is specifically stated that the detenu is repeatedly committing forest offences involving smuggling of red sanders and he has not stopped committing same type of offences even after cases and charge sheets were filed against him. It seems, the detaining authority has neither carefully gone through the documents filed by the sponsoring authority at the time of passing the detention

order nor even applied his mind while filing counter affidavit by realizing the mistake crept in the grounds of detention.

Similar issue came before this Court in the case of Vasanthu Sumalatha v. State of Andhra Pradesh and Others¹ wherein this Court, while allowing W.P.No. 6510 of 2015 and batch, held as under:

“In W.P.No. 6510 of 2015, the grounds of detention dated 20.12.2014 record that the detenu was repeatedly committing forest offences involving smuggling of red sanders; he had not stopped, and was continuously conducting the same type of offences even after cases were registered and charge-sheets were filed against him; and no charge-sheet was filed in any of the cases referred to in the grounds of detention. In the counter affidavit filed in W.P.No. 6510 of 2015, it is stated that the detention order, being a preventive measure to prevent the detenu from further indulging in committing unlawful activities, the question of non-filing of charge-sheet and trial being pending, does not debar the detaining authority from passing the order of detention against the detenu.

.....”

In view of the facts narrated above and the legal position, the grounds of detention contain factual errors wherein they recorded that in spite of criminal cases and charge-sheets having been filed the detenu continued to involve himself in other criminal cases. This statement, in the grounds of detention, is factually incorrect. As a matter of fact, no charge-sheet was filed prior to the order of detention in any of the six cases. Thus, it is evident that the detaining authority was swayed by irrelevant considerations and there

¹ 2016(2) ALD (CrL) 156

was no independent application of mind on his part. Whether the investigation is in a preliminary stage or whether a charge sheet is filed, is also relevant information required to be apprised to the detaining authority or else the detaining authority could be misled into believing that in spite of filing of the charge-sheets, the detenu did not mend his ways in spite of having been involved in several cases. As, in none of the cases, charge sheet was filed. Therefore, the assumption of the detaining authority in that respect to the contrary, clearly vitiates the detention order.

It is an admitted fact that no charge sheet is filed against the detenu in any of the cases registered against him.

In view of the above discussion and the legal position, the detention proceedings in REV-CSECOPDL(PRC)/ 1/ 2017-D, TH(C7), dated 14.04.2017 issued by the 2nd respondent – Collector and District Magistrate, Chittoor and the orders issued by the 1st respondent – State, vide G.O.Rt.1218, dated 01.06.2017 confirming the detention proceedings of the 2nd respondent, are hereby set aside. The Superintendent, Central Prison, Kadapa, Y.S.R.Kadapa District is hereby directed to release the detenu i.e. Kanderi Ayyappa forthwith if he is not required in any other case.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

27.12.2017

SURESH KUMAR KAIT, J

bcj

T.AMARNATH GOUD, J

