

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION No.15481 of 2017

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

The petitioner seeks a writ of Habeas Corpus to produce her husband, Chitikela Suribabu, who is detained in Central Prison, Visakhapatnam, pursuant to the order of detention dated 19-01-2017 passed by the Collector and District Magistrate, Visakhapatnam, by declaring it to be illegal and unconstitutional and to set him free.

2. The order of detention dated 19-01-2017 cited five criminal cases, in which the detenu was involved, as the grounds for detention. The said order of detention was approved by the Government of Andhra Pradesh vide G.O.Rt.No.175 dated 27-01-2017 and was thereafter confirmed for a period of 12 months, vide G.O.Rt.No.513 dated 07-03-2017.

3. Sri D.Purna Chandra Reddy, learned counsel representing Sri G.Venkat Reddy, learned counsel for the petitioner, would contend that the order of detention is liable to be set aside on the short ground that the detaining authority did not satisfy himself as to the likelihood of the detenu being released on bail, though he was aware of the fact that the detenu was housed in Central Prison, Visakhapatnam, in connection with the cases cited as the grounds for detention.

4. Perusal of the order and grounds for detention bears out this fact as the detaining authority mentioned the factum of bail being granted to the detenu in three out of the five cited cases. However, he did not record any satisfaction thereafter as to the likelihood of the detenu being released on bail in the remaining cases and the possibility of his indulging in activities prejudicial to public order. In the order of detention, the detaining authority merely stated as under:-

“Whereas, it is further noticed that, the acts of the individual are prejudicial to the maintenance of the Public Order. He has criminal history. He was warned several times by local police to safe guard public interest. In spite of it, he did not change his attitude and character and continuing his criminal activities and disturbing the public tranquillity and peaceful atmosphere in the villages with his henchmen. Despite repeated warning from the local police officials also he did not change his behaviour, but turned adamant and continuing his illegal activities. Finally, it is noticed that his dangerous activities are detrimental to the safety and security of properties and human lives.”

5. Sri D.Purna Chandra Reddy, learned counsel, would place reliance on **Champion R.Sangma V. State of Meghalaya**¹, wherein the Supreme Court took note of the principles laid down by it earlier in **Kamarunnisa V. Union of India**² to the following effect:-

“13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that

¹ (2015) 16 Supreme Court Cases 253

² (1991) 1 SCC 128

on being so released he would be all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in **Ramesh Yadav** was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to draw since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.”

Applying the aforesaid triple requirement test, the Supreme Court invalidated the order of detention as no satisfaction had been recorded by the detaining authority that there was reliable material placed before him on the basis of which he had reason to believe that there was a real possibility of release of the detenu on bail.

6. The learned Special Government Pleader appearing for the learned Advocate General would however place reliance on para 23 of the counter affidavit filed by the District Collector, Visakhapatnam, wherein he stated as under:-

“23. In reply to Ground (iv) of the affidavit, it is not correct to state that the detaining authority has not recorded his

satisfaction about the necessity to pass the order of detention against the detenu.

It is submitted that, in the order of detention it has been clearly stated that the detenu has committed five crimes, in 3 crimes he obtained Court bail, one crime is pending trial and in one crime he is a remand prisoner. The cases registered have not shown any deterrent effect on him. In spite of warnings several times by local police to safeguard public interest, he did not change his attitude and character and continuing his criminal activities and disturbing the public tranquillity and peaceful atmosphere in the villages with his henchmen. His dangerous activities are detrimental to the safety and security of properties and human lives. He is acted and calculated to act in a manner prejudicial to the maintenance of public order. He is responsible for not only deterring public servants in discharging their legitimate duties, but also doing illegal transportation of Ganja and anti-social activities. In spite of registration of crimes and arrest, he continued to commit offences one after another after obtaining Court bail in each case. As the activities of the detenu are dangerous and hazardous for the society he should be dealt with iron hand and that this is a right case to invoke the powers vested on me as per the Act, and accordingly after arriving at my subjective satisfaction, I passed the impugned order of detention. The Advisory Board after hearing the detenu opined that there is sufficient cause for the detention of the detenu. Thereafter, the Government issued confirmation G.O directing that the detention of detenu be continued for a period of 12 months from the date of his detention i.e., 20.1.2017. The purpose of passing an order under preventive detention is not with a view to punish the individual for the past events or for his past criminal activities, but essentially to prevent him from indulging in any such activities any further. Therefore, the order of preventive detention passed by me, which was confirmed by the State Government is in accordance with law and the contention to the contrary is untenable and unsustainable.”

7. The learned Special Government Pleader would contend that though it has not been spelt out in clear terms in the order of detention and the grounds for detention, the detaining authority was well aware of the full facts and having subjectively satisfied himself that there was a real likelihood of the detenu being enlarged on bail and in anticipation thereof, the order of detention was passed. However, we are not impressed. Even the above extract from the counter affidavit does not reflect any satisfaction being recorded by the detaining authority as to the likelihood of the detenu being released on bail. Thus, as matters stand, the detaining authority failed to satisfy the second limb of the triple requirement test, i.e., that he had reason to believe on the basis of reliable material placed before him that there was a real possibility of the detenu being released on bail and that on being so released, he would in all probability indulge in prejudicial activities.

8. Though the learned Special Government Pleader would argue otherwise, we are of the opinion that it is not for this Court to read between the lines or fill in the gaps as it is for the detaining authority to fulfil all the requirements for justifying the subjective satisfaction on the strength of which he passed the detaining order. In the case on hand, we find that the detaining authority did not, in fact, satisfy himself as to the essential requisite of the likelihood of the detenu being enlarged on bail.

9. The order of detention dated 19-01-2017, which stood confirmed thereafter by the Government of Andhra Pradesh, is vitiated on the aforesaid grounds and cannot be sustained.

10. The writ petition is accordingly allowed setting aside the order of detention dated 19-01-2017 passed by the Collector and District Magistrate, Visakhapatnam, confirmed under G.O.Rt.No.513 dated 07.03.2017. The detenu, Chitikela Suribabu, S/o Late Appalanaidu, shall be set at liberty forthwith from the Central Prison, Visakhapatnam, 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

T.AMARNATH GOUD, J

Date: 10.10.2017
SHR