

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION NO.28748 OF 2016

DATED:04-1-2017

Between:

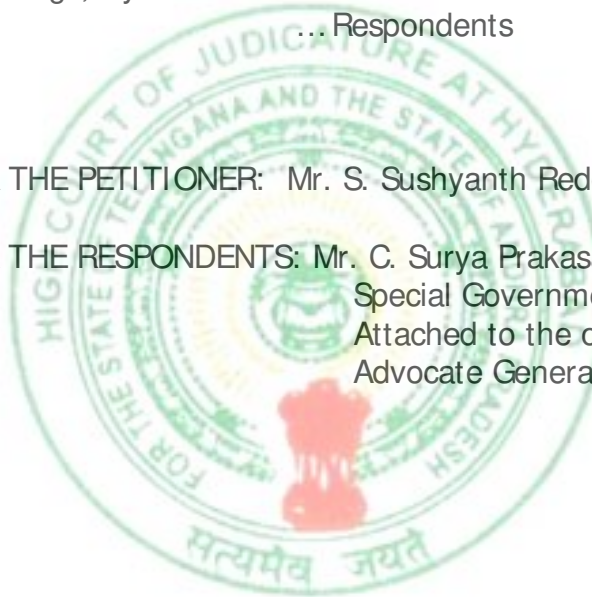
S. Panchalamma ... Petitioner

And

The State of Andhra Pradesh
Rep. by its Chief Secretary
General Administration (Law & Order) Department
Secretariat Buildings, Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. S. Sushyanth Reddy

COUNSEL FOR THE RESPONDENTS: Mr. C. Surya Prakasa Rao,
Special Government Pleader
Attached to the office of the
Advocate General (AP)



THE COURT MADE THE FOLLOWING:

ORDER: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The preventive detention of one Singamala Giri Babu @ Giri @ Chemical Giri (hereinafter referred to as 'the detenu') under Section 3(1) and (2) read with Section 2(a) and (g) 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'), is assailed in this writ petition, by the sister of the detenu.

2. The detenu is an alleged red sanders smuggler and facing as many as five criminal cases for indulging in the said activity. The impugned order of detention is questioned mainly on three grounds, namely, (i) that the detenu was granted bail in four criminal cases, but bail was rejected in one case, i.e., Crime No.31 of 2016, which was not considered by the detaining authority; (ii) that respondent No.1 has not come out with the date on which the detenu's representation against the detention was disposed of and therefore it is reasonable to presume that the representation was not disposed of within a reasonable time and consequently the action of the respondents is violation of Article 22(5) of the Constitution of India, and (iii) that the order of detention discloses that respondent No.2 has detained the detenu "until further orders" and the same is contrary to the order of this Court in *R. Manohar & Guriginjakunta Ramesh Naidu v. State of Andhra Pradesh* (W.P. Nos.38012 and 39519 of 2014, dt.6.4.2015).

3. Opposing the above submissions, Sri C. Suryaprakasa Rao learned Special Government Pleader attached to the office of the learned Advocate General (AP), submitted that though as on the date of passing of the detention order the bail application of the detenu was rejected in connection with Crime No.31 of 2016, within one week of the passing of

the detention order the detenu was granted bail by this Court and that from the said fact the apprehension of respondent No.2 that the detenu is likely to be released on bail stood fortified. As regards the delay in disposal of the representation pleaded by the learned counsel for the detenu, the learned Special Government Pleader invited this Court's attention to G.O. Rt. No.1750 General Administration (Law & Order) Department, dt.17.8.2016, by which the detention order was confirmed, and submitted that from the contents of the said G.O., it is clear that the detenu's representation dt.14.07.2016 was rejected before the confirmation order was passed and that therefore in the absence of any obligation to dispose of the detenu's representation before the passing of the confirmation order, the question of delay in disposal of the representation does not arise. As regards the third plea of the learned counsel for the detenu, the learned Special Government Pleader submitted that the initial detention order shall not be for a specified period as held by the Constitution Bench in *Makhan Singh Tarsikka v. State of Punjab*¹.

4. We have carefully considered the submissions of the learned counsel for the parties and perused the record.

5. With respect to the first ground raised by the learned counsel for the detenu, it is not in dispute that as on the date of passing of the impugned detention order the detenu was granted bail in four out of the five criminal cases. No doubt in Crime No.31 of 2016 the bail application stood rejected as on the date of passing of the detention order, but, within one week of the passing of the detention order the detenu was able to secure bail even in the said case also. This subsequent event, in our opinion, has fortified the apprehension of the detaining authority that

¹ AIR 1952 SC 27

unless the detenu is detained under the Act, his activities could not be controlled just by invoking normal legal procedure.

6. As regards the second noted plea, learned counsel for both the parties relied upon the judgment of the Constitution Bench of the Supreme Court in *K.M. Abdulla Kunhi and B.L. Abdul Khader v. Union of India*². It was held therein that there is no constitutional mandate under Clause (5) of Article 22 of the Constitution of India much less any statutory requirement to consider the representation of the detenu before confirming the order of detention. In the instant case, the detenu has made a representation against his detention which was rejected by respondent No.1 even before it has issued G.O. Rt. No.1750, dt.17.8.2016, whereunder the detention order was confirmed. Thus, as per the dicta of the aforementioned Constitution Bench judgment when there was no obligation on the part of the State to consider the representation against detention till confirmation order was passed, the question of delay in disposal of the representation till the confirmation order was passed, does not arise. Even before the obligation of respondent No.1 to consider the representation has commenced, the representation of the detenu was disposed of. In the light of these undisputed facts, the detention order cannot be interfered with on the ground of purported delay in disposal of the representation of the detenu.

7. With respect to the third mentioned plea of the detenu, the Constitution Bench of the Supreme Court in *Makhan Singh Tarsikka* (1 supra), held that until the Advisory Board to which the case has been referred, reports that the detention is justified, the period of detention shall not be fixed and that fixing a specific period of detention in the

² (1991) 1 SCC 476

initial order itself is contrary to the scheme of the Preventive Detention Act, 1950, the relevant provision of which is *in pari materia* with that under the present Act. The common order dt.6.4.2015 in W.P. Nos.38012 and 39519 of 2014 of this Court relied upon by the learned counsel for the detenu, is of no avail to him for the reason that in the said cases, the initial order of detention has contained a specific period of detention and this Court has held that subsequent errata replacing the said period with the words “until further orders” does not render the detention order valid. The facts of the said are converse to that in the present case as the impugned detention order was passed without fixing a specific period by using the words “until further orders” and is in conformity with the law laid down by the Supreme Court in *Makhan Singh Tarsikka* (1 supra).

8. For the aforementioned reasons, the impugned detention order, which was confirmed by respondent No.1 vide G.O. Rt. No.1750, dt.17.08.2016, is not liable for interference and the writ petition is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

4-1-2017

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