

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

WRIT PETITION No.6171 of 2017

ORDER: (per Justice Sanjay Kumar)

This writ petition was filed by the wife of the detenu, Abbarao Penchalaiah, seeking his release from the Central Prison, Kadapa, YSR Kadapa District, where he was detained, pursuant to the detention order dated 26.12.2016 passed by the Collector and District Magistrate, Chittoor District, in exercise of power under Section 3 (1) & (2) read with Section 2 (a) & (g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. This detention was approved by the Government of Andhra Pradesh *vide* G.O.Rt.No.43 dated 06.01.2017 and was thereafter confirmed by it *vide* a separate order.

Sri M.S.P.Kamaraju, learned counsel for the petitioner, would contend that the order of detention stands vitiated as the respondents failed to furnish a copy of the order under which the detenu was granted bail in relation to Crime No.158 of 2014 on the file of the East Police Station, Laxmipuram Circle, Tirupati.

Though the District Collector, Chittoor, filed his counter-affidavit, there is no mention made therein as to whether the said bail order was furnished to the detenu.

Learned Special Government Pleader appearing for the learned Advocate General for the State of Andhra Pradesh would however concede that this bail order does not find mention or place in the documents furnished to the detenu, a compilation of which is placed before this Court. He, however, does not dispute that the detaining

authority relied upon the said bail order while taking a decision in the matter.

In the light of the law laid down by this Court in various judgments (Vasanthu Sumalatha v. State of Andhra Pradesh¹ and I. Dhanalaxmi v. State of Telangana², followed by a Division Bench in which one of us, SK,J, was a member in Gattu Kavita v. State of Telangana³), failure to furnish all relevant material, including copies of the bail orders, would result in negating the right of the detenu to make an effective representation against his detention. It was held in the said decisions that mere awareness of the detenu of the bail order would not justify failure of the detaining authority to furnish copies of such orders to the detenu when he had no access to such orders while he was in preventive custody.

Learned Special Government Pleader would place reliance on Vinod K. Chawla v. Union of India⁴ to contend to the contrary.

However, we find that this judgment did not lay down any proposition adverse to the view taken by this Court in the judgments referred to supra as it involved a different principle altogether. All that the Supreme Court held therein was that failure on the part of the sponsoring authority to place all documents before the detaining authority cannot lead to an inference that the formation of opinion and subjective satisfaction of the detaining authority stood vitiated. That is not the issue before us in the present case.

¹ 2016 (1) ALT 738 (DB)

² 2016 (2) ALT (CrI.) 315 (DB) (A.P.)

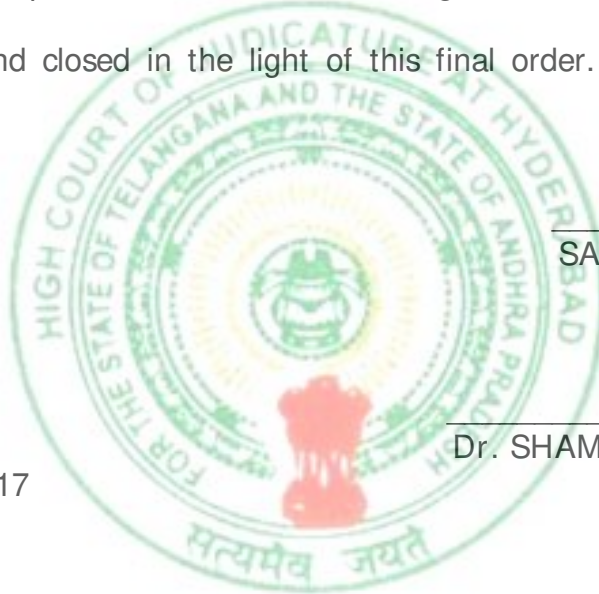
³ 2016 (3) ALT (CrI.) 399 (DB) (A.P.)

⁴ (2006) 7 SCC 337

That being so, following the law laid down by this Court in the earlier judgments, we hold that the detention of the petitioner's husband is illegal and unsustainable.

The order of detention dated 26.12.2016 passed by the Collector and District Magistrate, Chittoor District, which was confirmed by the Government of Andhra Pradesh, is accordingly set aside. The detenu, Abbarao Panchalaiah alias Swamy Naidu, shall be set at liberty forthwith in the event his detention is not required in connection with any other case.

The writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date:02.08.2017

GJ