

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

WRIT PETITION No.15263 of 2017

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

The petitioner seeks a writ of *habeas corpus* directing the respondents to produce her husband-Karim Ahamad Davood Jageer @ Jageer @ Jakir @ Jakeer, who is detained in Central Prison, Y.S.R. Kadapa District, and to forthwith release him after declaring his detention illegal.

2. The petitioner's husband was subjected to preventive detention by the Collector and District Magistrate, Y.S.R. Kadapa District, in exercise of power under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for brevity, 'Act of 1986') under order dated 30.12.2016. The said order of detention was approved by the Government of Andhra Pradesh, *vide* G.O.Rt. No.65 dated 09.01.2017, and was thereafter confirmed for a period of 12 months from the date of detention, *vide* G.O.Rt. No.494 dated 05.03.2017.

3. Sri Prahlad Reddy, learned counsel representing Sri P. Subash, learned counsel for the petitioner, would contend that the preventive detention of the petitioner's husband is based on the subjective satisfaction of the detaining authority which was arrived at upon a misconception of the factual position. He would point out that the petitioner's husband has been in judicial custody since 20.08.2016 and the order of detention was passed more than four (4) months thereafter, but

the detaining authority was not informed of the fact that the detenu had not even sought bail in any of the criminal cases pending against him.

4. Learned Government Pleader for the State of Andhra Pradesh would however rely upon *Ahamed Nassar v. State of Tamil Nadu*¹, wherein it was held as under:

"So before the detaining authority, there existed not only order dated 12.4.1999 rejecting his bail application but the contents of the bail application dated 1.4.1999. The averments made therein are relevant material on which subjective satisfaction could legitimately be drawn either way. Thus in spite of rejection of the bail application by a court, it is open to the detaining authority to come to his own satisfaction based on the contents of the bail application keeping in mind the circumstance that there is likelihood of detenu being released on bail. Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The words "likely to be released" connote chances of being bailed out, in case there be pending bail application or in case, if it is moved in future, is decided. The word "likely" shows it can be either way. So without taking any such risk if on the facts and circumstances of each case, the type of crime to be dealt with under the criminal law, including contents of the bail application, each separately or all this compositely, all would constitute to be relevant material for arriving at any conclusion. The contents of bail application would vary from one case to the other, coupled with the different set of circumstances in each case, it may be legitimately possible in a given case for a detaining authority to draw an inference that there is likelihood of detenu being released on bail."

5. Perusal of the grounds for detention reflects that the detaining authority categorically recorded in page 60 that the detenu came out from the prison on bail and was habitually committing similar offences. However one page earlier, i.e., in page 59, the detaining authority observed that cases were registered against the detenu but had

¹ (1999) 8 SCC 473

not shown any deterrent effect on him so far and there is every possibility of the accused continuing his activities of red sander trees illegal felling and cutting into logs by dressing, theft and smuggling as 'Goonda' leading to theft and prejudice to maintenance of public order, if he is released on bail. It is therefore clear that the detaining authority was not even certain as to whether the detenu had been released on bail. It is no doubt within the province of the detaining authority to subjectively satisfy himself that there was a real likelihood of the detenu being released on bail before passing a detention order. But such subjective satisfaction must be borne out by the record and must be clearly demonstrated in the order and the grounds for detention. In the case on hand, the admitted fact is that the petitioner's husband has been in judicial custody since 20.08.2016 and did not even move any bail application. That being so, the detaining authority necessarily had to record as to how he was satisfied that there was a likelihood of the detenu being released on bail. Presently, not only do we not find any such reasoning but, on the other hand, there is clear proof of the detaining authority not even being certain of whether detenu was in jail or he was released on bail.

6. When the detaining authority seeks to exercise the draconian power under Section 3(2) of the Act of 1986, a high level of application of mind and responsibility is expected of him, as such power is to be exercised solely on the strength of his subjective satisfaction. Though such subjective satisfaction is ordinarily not open to the judicial review, it must be manifest that all factors have been considered while arriving at such satisfaction. For such application of mind, the full facts of case must be placed before the authority. Presently, we find that the detaining authority was not even informed of the fact that the detenu was

in judicial custody since 20.08.2016. On the other hand, the detaining authority seems to have been informed that he came out from the prison on bail and was continuing to commit similar offences.

7. Learned Government Pleader fairly concedes that no such bail was granted to the detenu.

8. This being the factual position, we are of the considered view that the subjective satisfaction, on the strength of which, the order of detention was passed by the Collector and District Magistrate, Y.S.R. Kadapa District, was bereft of proper application of mind to the relevant facts.

9. The writ petition is accordingly allowed setting aside the order of detention dated 30.12.2016 passed by the Collector and District Magistrate, Y.S.R. Kadapa District, and the consequential Government Orders approving and confirming the same. The detenu, Sri Karim Ahamed Davood Jageer @ Jageer @ Jakir @ Jakeer, shall forthwith be released from custody unless his detention is required in connection with any other cases.

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

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

12th September, 2017

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