

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.11759 OF 2017

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

The petitioner seeks a writ of *habeas corpus* for production of her husband, Kondampalli @ Kondapalli Masthan Valli @ Masthan Valli @ Masthan, so as to set him at liberty by declaring the detention order dated 30.12.2016 passed by the Collector and District Magistrate Y.S.R. District, Kadapa, as illegal.

The order of detention was approved by the Government of Andhra Pradesh vide G.O.Rt. No.63 dated 09.01.2017 and was then confirmed for a period of 12 months from the date of detention, i.e., 31.12.2016, under G.O.Rt. No.492 dated 05.03.2017.

Sri P. Nagendra Reddy, learned counsel for the petitioner, would contend that the detention of the petitioner's husband is liable to be set-aside as the detaining authority was misled on facts and the same led to 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, 'the Act of 1986').

Learned counsel would refer to the order of detention dated 30.12.2016; wherein, the detaining authority recorded that the detenu, being A-1 in Crime No.216 of 2016 on the file of Mydukur Upgraded Police Station, Kadapa, was arrested on 26.07.2016 by the Inspector of Police, Mydukur Upgraded Police Station, but he got bail from the Hon'ble II Additional Sessions Judge, Kadapa at Proddatur and continued his

activities, fearlessly entering into the reserve forest and involving himself in red sanders trees illegal falling, theft and smuggling.

Learned counsel placed before us the remand certificate dated 21.08.2017 furnished by the Superintendent, Central Prison, Kadapa, which confirmed that the petitioner's husband was in judicial custody in Central Prison, Kadapa, from 27.07.2016 to 30.12.2016 and was continued in judicial custody from 31.12.2016 till date as a detenu. Learned counsel would therefore assert that the impression under which the detaining authority exercised power to the effect that the detenu had secured bail and having been released, he continued his activities as afore-stated, was contrary to the factual position.

Learned Special Government Pleader appearing for the learned Advocate General, State of Andhra Pradesh, would contend that earlier, the detenu secured bail on 09.06.2016 in Crime No.174 of 2015 on the file of Railway Kodur Police Station and committed an offence shortly thereafter and, therefore, the detention of the petitioner's husband is lawful and warranted.

We are however of the opinion that exercise of power under Section 3(2) of the Act of 1986 being draconian in nature, the subjective satisfaction on the strength of which such power is exercised by the detaining authority must be beyond reproach. When the detaining authority only relies upon material placed before him by the sponsoring authority, all necessary facts must be furnished so that the subjective satisfaction of the detaining authority is fully informed and factually correct. In the case on hand, the order of detention reflects that the detaining authority was under the impression that after his arrest on 26.07.2016, the detenu secured bail and upon his release pursuant thereto, he continued

his activities, fearlessly entering into the reserve forest for illegal felling of red sanders trees for the purpose of smuggling. As this impression given to the detaining authority is proved to be incorrect in the light of the remand certificate dated 21.08.2017 furnished by the Superintendent, Central Prison, Kadapa, we are of the opinion that the subjective satisfaction of the detaining authority was not founded on proper understanding of the actual ground position. On this short ground, the detention of the petitioner's husband under Section 3(2) of the Act of 1986 and the consequential approval and confirmation thereof by the Government of Andhra Pradesh, are liable to be set-aside.

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. District, Kadapa, and the consequential approval and confirmation by the Government of Andhra Pradesh *vide* G.O.Rt. No.63 dated 09.01.2017 and G.O.Rt. No.492 dated 05.03.2017. The detenu, Sri Kondampalli @ Kondapalli Masthan Valli @ Masthan Valli @ Masthan, shall be set at liberty forthwith, 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

Dr. SHAMEEM AKTHER, J

Date: 12-09-2017.
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AND

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WRIT PETITION No.11759 OF 2017

(Order of the Division Bench delivered by
Hon'ble Sri Justice Sanjay Kumar)

Date. 12-09-2017

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