

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No. 34982 OF 2016

Between:

K.Jhansi Rani

... Petitioner

AND

The State of Telangana,
Rep. by its Principal Secretary,
General Administration Department (Law & Order),
Secretariat, Hyderabad, and another

... Respondents

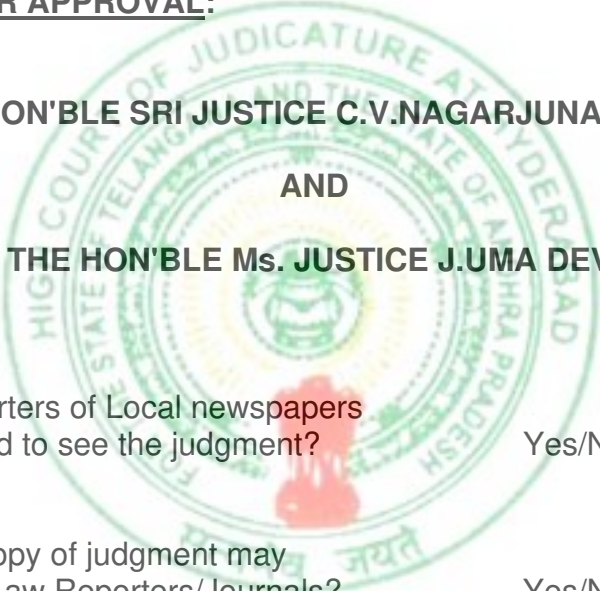
Date of Order Pronounced : 07-06-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE Ms. JUSTICE J.UMA DEVI

- 
1. Whether Reporters of Local newspapers
May be allowed to see the judgment? Yes/No
 2. Whether the copy of judgment may
be marked to Law Reporters/Journals? Yes/No
 3. Whether Their Lordships wish to see the
Fair copy of the judgment? Yes/No

C.V.NAGARJUNA REDDY, J.

J.UMA DEVI, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE Ms. JUSTICE J.UMA DEVI

+WRIT PETITION No. 34982 OF 2016

%Dated: 07-06-2017

#K.Jhansi Rani,

W/o late Laxmi Narayana,

60 years, House wife,

R/o Tirumala Towers, Railway Station Road,

Nidadavolu, West Godavari District

... Petitioner

VERSUS

\$The State of Telangana,

Rep. by its Principal Secretary,

General Administration Department (Law & Order),

Secretariat, Hyderabad, and another

... Respondents

!Counsel for the petitioner

:

Sri Challa Dhanamjaya

^Counsel for the respondents

:

G.P. for Home (T.S.)

<GIST :

>HEAD NOTE :

?Cases referred :

1. AIR 1964 SC 334
2. AIR 1989 SC 2027

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE Ms. JUSTICE J.UMA DEVI

W.P.No. 34982 OF 2016

DATED 07TH JUNE, 2017

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

The mother of one Kamepally Krishna Mohan @ Karthik @ Krish (hereinafter referred to as 'the detenu') filed this Writ Petition for issue of *Habeas Corpus* by releasing the detenu upon setting aside the detention order *vide* proceedings SB (I) No. 268/PD/S-1/2016 dated 24-09-2016 of respondent No. 2 as approved in G.O.Rt.No. 2165 dated 03-10-2016 by respondent No. 1.

2. The main ground of challenge to the impugned detention order is that though the detenu was under judicial custody in connection with as many as nine criminal cases and though there was no reasonable possibility of his being released on bail, respondent No. 2 without proper application of mind has passed the detention order. A perusal of the impugned order shows that after referring to nine criminal cases registered against the detenu, respondent No. 2 has stated as under:

"You have moved a bail petition in Cr.No. 137/2015 of Trimulgherry Police Station on 06-04-2016 and the same was dismissed by the Hon'ble Court on 18-04-2016. You have moved a 2nd bail petition on 19-04-2016 and the same was also dismissed by the Hon'ble Court on 21-04-2016. Hence, you continue to be in judicial custody."

3. It is the pleaded case of the petitioner, which is not controverted by the respondents, that out of nine criminal cases referred to in the detention order, the detenu was arrested on 26-11-2015 in connection with crime No. 137 of 2015 and that the detenu moved two bail applications in connection with the said crime, both of which were dismissed, out of which the latter bail application was dismissed on 21-04-2016. It is also the case of the detenu

that between 21-04-2016 and 24-09-2016 when the impugned detention order was passed, the detenu did not move any bail application. Sri Challa Dhanamjaya, learned counsel for the petitioner, submitted that even if the detenu is released in connection with crime No. 137 of 2015, he will not be set at free unless he obtains bail in all other eight pending criminal cases in which the detenu has not moved any bail application.

4. Learned Government Pleader for Home (T.S.) placed heavy reliance on the judgment in **Rameshwar Shaw Vs. District Magistrate, Burdwan**¹, the principle in which was reiterated in **N.Meera Rani Vs. Government of Tamil Nadu and another**² and in particular, on para No. 22 of the latter judgment which reads as under:

"We may summarize and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent and material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position."

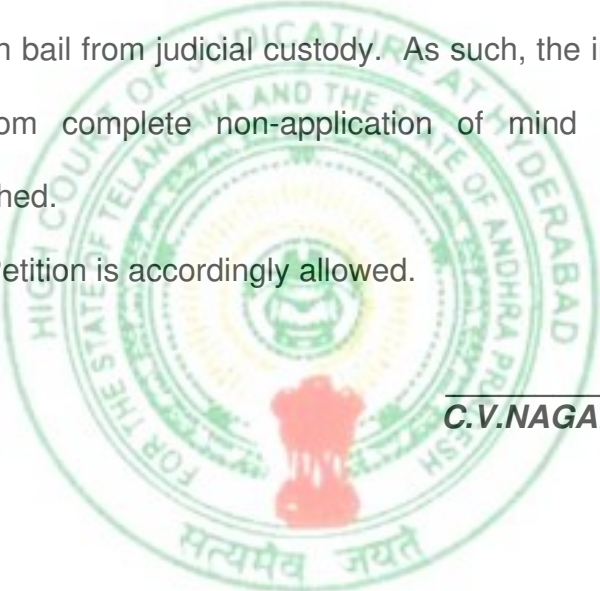
5. While there can be no quarrel on the legal proposition laid down in the aforementioned judgments, the difficulty arises in applying the same to the facts of each case. While the settled principle of law is that even if the detenu is under custody, that fact by itself does not invalidate the preventive detention provided the detaining the authority is reasonably satisfied that there is a likelihood of release of the detenu and that in view of his antecedent activities,

¹ AIR 1964 SC 334

² AIR 1989 SC 2027

which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities. On the admitted facts of the case as noted above, the detenu's two bail applications having been dismissed and the detenu having not applied for bail for a period of five months after his second bail application was dismissed, there existed reasonable possibility as on the date of passing the detention order for the detenu to secure bail. Even if there was such possibility in crime No. 137 of 2015, the detenu would not have been freed as he was facing eight other criminal cases in which he did not even apply for bail. Therefore, applying the legal propositions laid down in the above judgments to the facts of the present case, we are of the opinion that respondent No. 2 has not correctly assessed the possibility of the detenu being released on bail from judicial custody. As such, the impugned detention order suffers from complete non-application of mind and the same is accordingly quashed.

6. The Writ Petition is accordingly allowed.



C.V.NAGARJUNA REDDY, J.

J.UMA DEVI, J.

Date: 07-06-2017

Note:

L.R. Copies to be marked.

B/O

JSK