

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

WRIT PETITION No.4478 of 2017

ORDER: (per Justice Sanjay Kumar)

This writ petition was filed by Dantham Lakshmi Devi seeking production of her husband, Dantham Venkatesh, who was detained at Central Prison, YSR Kadapa District, pursuant to the detention order dated 01.11.2016 passed by the Collector and District Magistrate, YSR Kadapa District, under Section 3 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.2285 dated 07.11.2016. Thereafter, upon the recommendations of the Advisory Board, the Government of Andhra Pradesh confirmed the detention under G.O.Rt.No.2652, General Administration (Law & Order) Department, dated 29.12.2016, for a period of twelve months commencing from 02.11.2016.

Sri S. Dushyanth Reddy, learned counsel for the petitioner, would contend that the order of detention under challenge is not sustainable in law in view of the fact that the detenu was not provided copies of the bail orders granted in Crime Nos.32 and 54 of 2016 on the file of the Railway Kodur Police Station.

Learned Special Government Pleader appearing for the learned Advocate General for the State of Andhra Pradesh would fairly concede that copies of the bail orders in the aforestated two cases were not furnished to the detenu. He would state that by oversight, a copy of the common order dated 30.06.2016 passed by the learned III Additional District and Sessions Judge, Rajampet, in three cases of which two related

to the detenu was furnished to the detenu overlooking the fact that the third case therein, being the bail petition filed in Crime No.32 of 2016 of Railway Kodur Police Station, did not relate to the detenu but to another accused. Learned Special Government Pleader would further state that in so far as Crime No.54 of 2016 is concerned, the earlier order passed by the learned V Additional District and Sessions Judge, Rayachoty, refusing to grant bail to the detenu in the said crime was furnished to him instead of the order granting bail to him.

In the light of the law laid down by this Court consistently 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 laid down therein was that failure on the part of the

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

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.

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 01.11.2016 passed by the Collector and District Magistrate, YSR Kadapa District, and the consequential G.O.Rt.No.2652, General Administration (Law & Order) Department, dated 29.12.2016, are accordingly set aside. The detenu, Dantham Venkatesh alias Dontham Venkatesh alias Chinnabbaiah, 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

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