

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.M. JAISWAL

WRIT PETITION No.64 OF 2017

DATED:05-07-2017

Between:

Zubeda Bee

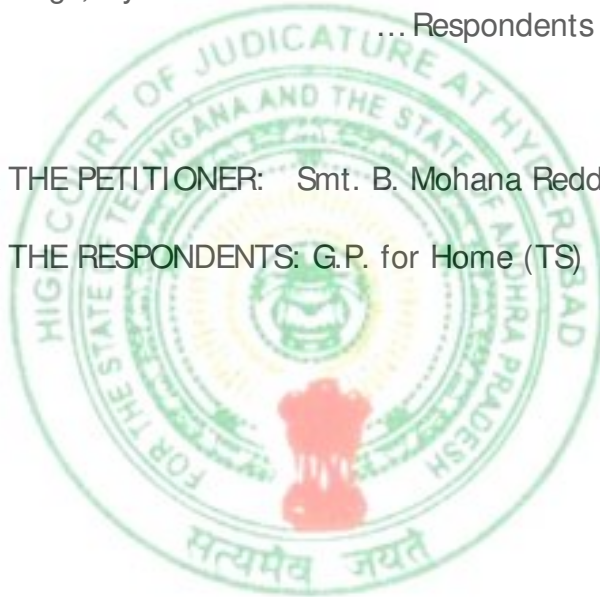
... Petitioner

And

The State of Telangana
Rep. by its Chief Secretary
General Administration (Law & Order) Dept.,
Secretariat Buildings, Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Smt. B. Mohana Reddy

COUNSEL FOR THE RESPONDENTS: G.P. for Home (TS)



THE COURT MADE THE FOLLOWING:

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

The detention of one Showkath Ali @ Shokat Ali ('the detenu') under the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, is assailed in this writ petition.

2. At the hearing, Smt. B. Mohana Reddy, learned counsel for the detenu, advanced two submissions, namely, (i) that though all the three bail applications of the detenu have been dismissed, respondent No.2 observed in the detention order that there is a possibility of the detenu coming out of the custody and repeating the commission of the offences which disturb the public order, and (ii) that the nature of the offences alleged against the detenu does not fall within the category of disturbance to public order and that therefore, the impugned detention order is liable to be set aside.

3. As regards the first submission, the detention order clearly shows that the detaining authority took note of the fact that in all the three criminal cases, which were made basis for the detention of the detenu, bail applications were dismissed on 28.9.2016, 7.10.2016 and 7.10.2016 respectively. Having regard to the said fact, respondent No.2 has observed as under:

"Though the bail petitions moved by you in Cr. Nos.34/2016 & 160/2016 of Mahankali PS and Cr. 108/2016 of Market PS were dismissed by the Hon'ble Court, there is every possibility of your moving bail petitions again in the above cases and there is every likelihood of your release from judicial custody very soon. On your release from judicial custody, there is every likelihood of your indulging in similar prejudicial activities which are detrimental to the public order, unless you are prevented from doing so by an appropriate order of detention."

4. At the hearing, learned counsel for the detenu has placed before us order of this Court *K. Jhansi Rani v. State of Telangana*¹. In the said order, this Court has profitably reproduced the following passage in *N. Meera Rani v. Government of Tamil Nadu*².

"We may summarise 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 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. Based on the ratio in *N. Meera Rani* (2 supra), the Division Bench of this Court, speaking through one of us (C. V. Nagarjuna Reddy, J), observed as under:

"...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 no (sic) 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."

6. In our opinion, the facts of the present case are more or less similar to that in *K. Jhansi Rani* (1 supra). On respondent No.2's own showing all the three bail applications of the detenu were dismissed, the last one being on 7.10.2016. The detention order was passed on

¹ W.P. No.34982 of 2016, dt.7.6.2017

² AIR 1989 SC 2027

01.11.2016 by which time the detenu has not filed fresh bail applications. Hence, following the ratio in *N. Meera Rani* (2 supra), as followed in *K. Jhansi Rani* (1 supra), we are of the opinion that there is no basis for respondent No.2 to arrive at his satisfaction that there was reasonable possibility of the detenu coming out of the custody and repeating the offences. On this ground alone, the detention order is liable to be set aside. In view of the finding on the first submission of the learned counsel for the detenu, it is not necessary for us to deal with the second submission.

7. In the result, the impugned detention order is set aside and the writ petition is allowed.



C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

05-07-2017

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