

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI

WRIT PETITION NO.38728 OF 2016

DATED:14-06-2017

Between:

K. Nandini

... Petitioner

And

The State of Andhra Pradesh
Represented by its Chief Secretary
Secretariat Buildings,
Amaravathi at Velagapudi,
Guntur District
and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. D. Purna Chandra Reddy

COUNSEL FOR THE RESPONDENTS: Mr. C.S. Suryaprakasha Rao,
Special Government Pleader (AP)



THE COURT MADE THE FOLLOWING:

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

The detention of one Kothapally Yeswanth, son of K. Janardhan and husband of the petitioner (hereinafter referred to as 'the detenu'), under Section 3(1) and (2) read with Section 2(a) and (g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, is assailed in this writ petition.

Mr. D. Purna Chandra Reddy, learned counsel for the detenu, submitted that though the detenu was in judicial custody as on the date of passing of the order of detention, respondent No.2, who passed the detention order, has not recorded the satisfaction that there is a likelihood of the detenu being released on bail and his repeating the offences disturbing the public order.

A perusal of the detention order shows that respondent No.2 stated therein that at present the detenu was lodged in Sub-Jail, Tirupati, and that if he is released on bail, he will go underground and continue his illegal activities.

In *N. Meera Rani v. Government of Tamil Nadu*¹, the Supreme Court has set aside the detention order on identical set of facts. Paragraph 23 of the judgment, which is relevant in the present context, is reproduced below:

"Applying the above settled principle to the facts of the present case we have no doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with its annexure indicates the detaining authority's awareness of the fact of detenu's jail custody at the time of the making of the detention order. However, there is no indication therein that the detaining authority considered it likely that the detenu could be released on bail. In fact, the contents of the order, particularly, the above quoted para 18 show the satisfaction of the detaining authority that there was ample material to prove the detenu's complicity in the bank dacoity including sharing of the booty in spite of absence of his name in the FIR as one of the dacoits. On these facts, the order of detention passed in the present case on September 7, 1988 and its confirmation by the State Government on October 25, 1988 is clearly invalid since the same was made when the detenu was already in jail custody for the offence of bank dacoity with no prospect of his release. It does not satisfy the test indicated by the Constitution Bench in Rameshwar Shaw v. District Magistrate,

¹ (1989) 4 SCC 418

Burdwan (AIR 1964 SC 334). We hold the detention order to be invalid for this reason alone and express no opinion on merits about the grounds of detention."

As respondent No.2 has not recorded his satisfaction that the detenu is likely to be released on bail, the impugned orders of detention and its confirmation cannot be sustained in law and the same are accordingly quashed. The writ petition is accordingly allowed.

C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

14-06-2017

bnr

