

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

WRIT PETITION No.11849 of 2017

ORDER: (per Justice Sanjay Kumar)

The petitioner seeks a Writ of Habeas Corpus declaring the order of detention dated 19.12.2016 passed by the Collector and District Magistrate, YSR District, Kadapa, in exercise of power 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, as illegal and to consequently direct release of her husband, Shaik Darbar Basha alias Rayachoty Darbar, who was detained pursuant thereto in the Central Prison, YSR District, Kadapa. This detention was confirmed by the Government of Andhra Pradesh, vide G.O.Rt.No.344, General Administration (Law & Order) Department, dated 13.02.2017, for a period of twelve months commencing from 20.12.2016.

Sri S. Dushyanth Reddy, learned counsel for the petitioner, would point out that in the order of detention and also the grounds of detention, the detaining authority, the Collector and District Magistrate, YSR District, Kadapa, recorded that the detenu had come out from the prison on bail and was habitually committing similar offences. Learned counsel would state that since his arrest on 05.10.2015, the detenu has been incarcerated and though bail was granted in some of the cases, he could not comply with the conditions and was never set at liberty. He would therefore contend that the subjective satisfaction of the detaining authority, the Collector and District Magistrate, YSR District, Kadapa, and the consequential order of detention passed by him was based on a factual misconception vitiating the entire exercise.

Learned counsel would place reliance on the order dated 27.06.2017 passed by this Court in W.P.No.44536 of 2016. Perusal of the said order reflects that in identical circumstances, this Court set aside the order of detention impugned therein observing thus:

“Before passing a preventive detention order which is an exception to Article 21 of the Constitution of India depriving a person of his personal liberty, the detaining authority must make proper application of mind. As respondent No.2 has formed a wrong impression that the detenu has been repeating the commission of offences after obtaining bail and coming out of the custody and this opinion having formed the basis for the detention of the detenu, the impugned order is not sustainable and the same is accordingly set aside.”

Learned counsel also produced the Remand Certificate dated 11.01.2017 issued by the Superintendent, Central Prison, Kadapa, certifying that the detenu has been in judicial custody in the said prison since 05.10.2015 till date.

Surprisingly, the detaining authority, the Collector and District Magistrate, YSR District, Kadapa, noted in the order of detention as well as the grounds of detention that the detenu came out from the prison on bail and was habitually committing similar offences.

Learned Assistant Government Pleader appearing for the learned Advocate General, State of Andhra Pradesh, does not dispute the fact that the detenu was not enlarged on bail after 05.10.2015. He is at a loss to explain as to how the Collector and District Magistrate, YSR District, Kadapa, recorded to the contrary.

In that view of the matter, it is manifest that the subjective satisfaction of the detaining authority in the case on hand was based on a

misconception of facts and in the light of the order passed by this Court in the earlier case referred to supra, the order of detention stands vitiated.

The writ petition is accordingly allowed setting aside the order of detention dated 19.12.2016 passed by the Collector and District Magistrate, YSR District, Kadapa, and the confirmation thereof by the Government of Andhra Pradesh, vide G.O.Rt.No.344, General Administration (Law & Order) Department, dated 13.02.2017. The detenu, Shaik Darbar Basha alias Rayachoty Darbar alias Kunti Basha alias Rayachoty Basha alias Darbar, shall be set at liberty forthwith from the Central Prison, Kadapa, YSR District, in the event his detention is not required in connection with any other case.

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:09.08.2017

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