

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

W.P. No. 19141 of 2017

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the proceedings dated 19.04.2017 issued by the 2nd respondent and the subsequent orders passed by the Government, vide G.O.Rt.No.1270, dated 09.06.2017, whereby the detenu has been directed to be kept under preventive detention for a period of 12 months.

The learned counsel for the petitioner submits that the respondents-authorities have relied upon five cases registered against the detenu which are as under:

- 1) Nagari P.S. Cr.No. 55 of 2015 U/ s.353, 307, 379 or 411 IPC and Sec.20(1) C (II)(III)(IV) (IX), 29 (IV)(A) of A.P. Forest Act, 1967 and Sections 3 and 4 of Red Sandal and Sandalwood Transit Rules, 1969 and Sec.55(2) of Biological Diversity Act, 2002 and Sec. 27(1) Arms Act, 1959.
- 2) S.R. Puram P.S. Cr.No. 15 of 2015 U/ s.307, 353, 379 IPC and 120(B) IPC r/ w 34 IPC and Sec. 32 and 29 of A.P. Forest Act, 1967 and Rules 3 and 4 of A.P. Sandal Wood and Red Sanders Wood Transit Rules, 1969, Sec.29 of Wildlife Protection Act, 1972, Sec.55(2) and 58 of Biological Diversity Act, 2002.
- 3) Mudivedu P.S. Cr.No. 38/ 2016 U/ s. 353, 307, 379, 120(b) r/ w 34 IPC, Sec.20(i)(c)(iii)(iv)(v)(x) of A.P. Forest Act, 1967 and Rules 3 and 4 of A.P. Sandal Wood/ Red Sandal Wood Transit Rules, 1969, Sec.29 of Wildlife (Protection) Act, 1972, Sec.55(1)(2) & 58 of Biological Diversity Act.
- 4) Tiruchanur P.S. Cr.No. 258 / 2016, U/ s.447, 427, 379 IPC and 120(B) r/ w 34 IPC and Sec. 20(1)(d)(i)(a)(b) r/ w 20(1)(c) II, III,

IV, VI, X and Sec. 29(1)(4) (a)(i)(a)(b), Sec.32 of Forest Act, 1967 and Sec.55(2) of Biological Act, 2002 and Sec. 3 of P.D.P.P. Act, 1984.

- 5) Srikalahasthi Rural P.S Cr.No. 09/2017, U/s. 447, 427, 379, 120(B) r/w 411 IPC, Sec.20(1)(d)(i)(a)(b) r/w Sec.20(1)(c) ii, iii, iv, vi, x, Sec.29(1) (4) (a) (i) (a) (b), 32(B) of A.P. Forest Act, 1967, Sec.55(2) of Biological Diversity Act, 2002 and Sec.3 of P.D.P.P. Act, 1984.

The learned counsel for the petitioner submits that the detenu was originally arrested on 11.01.2017 in connection with Cr.No.09 of 2017 of Srikalahasthi Rural Police Station, and subsequently, produced on P.T Warrants in five cases referred in the grounds of detention and that the detenu was granted conditional bails in all the five cases, but except bail order granted in Cr.No. 258 of 2016 of Tiruchanur Police Station, the other bail orders were not supplied to him enabling him to submit his effective representation before the authority concerned. If the detaining authority wants to pass the order of detention against a person, who is in judicial custody, he has to record satisfaction about the necessity to pass the order of detention as well as the imminent possibility of his release on bail based on cogent material. But the detaining authority arrived at his satisfaction and passed the detention order, whereas in none of the cases mentioned above charge sheet was filed before the Court concerned.

In reply to the aforesaid grounds taken by the petitioner, the 2nd respondent has filed counter affidavit *inter*

alia stating that while passing detention order indicating grounds thereof, an inadvertent mistake crept in the order that charge sheets were filed. On perusing all the documents placed before him by the sponsoring authority which did not contain charge sheets, he arrived at his subjective satisfaction that there exist grounds for the detention of the detenu.

Interestingly, in the same affidavit in paragraph No.52, it is again stated that the detenu is repeatedly committing forest offences involving smuggling of red sanders and he has not stopped committing the same type of offences even after cases and charge sheets were filed against him.

Similar issue came before this Court in the case of *Vasanthu Sumalatha v. State of Andhra Pradesh and Others*¹ wherein this Court, while allowing W.P.No. 6510 of 2015 and batch, held as under:

“In W.P.No. 6510 of 2015, the grounds of detention dated 20.12.2014 record that the detenu was repeatedly committing forest offences involving smuggling of red sanders; he had not stopped, and was continuously conducting the same type of offences even after cases were registered and charge-sheets were filed against him; and no charge-sheet was filed in any of the cases referred to in the grounds of detention. In the counter affidavit filed in W.P.No. 6510 of 2015, it is stated that the detention order, being a preventive measure to prevent the detenu from further indulging in committing unlawful activities, the question of non-filing of charge-sheet and trial being pending, does not debar the detaining authority from passing the order of detention against the detenu.

¹ 2016(2) ALD (CrL) 156

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In view of the facts narrated above and the legal position, the grounds of detention contain factual errors wherein they recorded that in spite of criminal cases and charge-sheets having been filed the detenu continued to involve himself in other criminal cases. This statement, in the grounds of detention, is factually incorrect. As a matter of fact, no charge-sheet was filed prior to the order of detention in any of the five cases. Thus, it is evident that the detaining authority was swayed by irrelevant considerations and there was no independent application of mind on his part. Whether the investigation is in a preliminary stage or whether a charge sheet is filed, is also relevant information required to be apprised to the detaining authority or else the detaining authority could be misled into believing that in spite of filing of the charge-sheets, the detenu did not mend his ways in spite of having been involved in several cases. As, in none of the cases, charge sheet was filed. Therefore, the assumption of the detaining authority in that respect to the contrary, clearly vitiates the detention order.

It is an admitted fact that no charge sheet is filed against the detenu in any of the cases registered against him.

In view of the above discussion and the legal position, the detention proceedings in REV-CSECOPDL(PRC)/ 2/ 2017-D,

TH(C7), dated 19.04.2017 issued by the 2nd respondent – Collector and District Magistrate, Chittoor and the orders issued by the 1st respondent – State, vide G.O.Rt.1270, dated 09.06.2017 confirming the detention proceedings of the 2nd respondent, are hereby set aside. The Superintendent, Central Prison, Kadapa, Y.S.R.Kadapa District is hereby directed to release the detenu i.e. B. Muniyappan forthwith if he is not required in any other case.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

27.12.2017

SURESH KUMAR KAIT, J

bcj

T.AMARNATH GOUD, J