

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

WRIT PETITION No.37306 of 2016

Date: 06.06.2017

Between:

Mohd.Siddiqui, S/o late Mohd. Osman

.. Petitioner

and

1.The State of Telangana, represented by its Chief
Secretary through General Administration (Law & Order)
GAD Department, Government of Telangana, Secretariat,
Hyderabad, and 2 others

.. Respondents

Counsel for the Petitioner: Mr.Vinod kumar Deshpande,
Senior Counsel for Mr.Vikas Joshi

Counsel for the Respondents : G.P. for Home (TS)

THE COURT MADE THE FOLLOWING:

ORDER: *(Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The detenu who, it appears, took to bad ways being a graduate in Architecture, is involved in as many as 14 criminal cases, all of which were registered for the offence under Section 380 I.P.C. It is alleged that the detenu by using his knowledge acquired in his education has been supplying the interior plans of the building to certain offenders to facilitate the commission of thefts in dwelling houses. Out of 14 cases, the detention order has referred to 4 cases pending against the detenu. The order further observed that in Crime No.178 of 2016 of Begumpet Police Station, the detenu has moved an application for bail in the Court of XI A.C.M.M., Secunderabad, and by order dated 24.06.2016, the same was dismissed. Two months thereafter, the detention order came to be passed.

It is the main contention of Mr.Vinod Kumar Deshpande, learned Senior Counsel for the petitioner, that when the bail application of the detenu was dismissed, there would not be any reasonable possibility of the detenu coming out on bail and, therefore, the apprehension of respondent No.2 that the detenu will come out of bail and repeat commission of offences is without any basis. In support of his submission, the learned Senior Counsel relied upon the judgments of this Court in *K.Anju V. State of Telangana*¹ and *M.Ram V. State of Telangana and others*².

¹ 2016 (3) ALT (CrI.) 413 (DB) (A.P.)

² 2017 (1) ALD (CrI.) 89

The learned Government Pleader for Home submitted that out of the 4 criminal cases, the detenu has secured bail in three cases and that only in Crime No.178 of 2016 of Begumpet Police Station his bail application was dismissed. He further submitted that since the detenu has succeeded in obtaining bail in three cases out of four cases, there is every possibility of his getting bail in the fourth case as well.

We have carefully considered the submissions of the learned Counsel for the parties with reference to the record.

In K.Anju (1st supra), a Division Bench of this Court, speaking through myself, after referring to the judgments in *Union of India V. Paul Manickam and another* ((2003) 8 SCC 342) and *Rekha V. State of Tamilnadu and another* (2011 (3) ALT (CrI.) 219 (SC), held that the detention order must be based on reasonable possibility of release of a person in jail, who is already in custody, provided, he has moved a bail application, which is pending and that, it follows logically that if no bail application is pending, then there is no likelihood of the person being released on bail and hence, the detention order will be illegal.

In *M.Ram V. State of Telengana and others* (2nd supra) the same Division Bench, after referring to the judgments in *Sunil Jain V. Union of India and another* ((2006) 3 SCC 321; *M.Ahamedkutty V. Union of India and another* (1990) 2 SCC 1 and *P.U.Abdul Rahiman V. Union of India*, (1991 Supp. (2) SCC 274, took note of the observations made by the Supreme Court that whether a detenu on the date of passing

of the order of detention was in custody or not would be a relevant fact and that it would also be a relevant fact whether he is free on that date and if he is, whether he is subjected to certain conditions pursuant to and in furtherance of the order of bail. This Court also took note of the following twin-tests applied by the Apex Court in matters of this nature, namely (i) whether the impairment (detention) has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (ii) whether relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority. In paragraph-5 of the judgment, this Court observed as follows:

“If the detenu is under judicial remand, he is not expected to continue the offences so long as he is not released from the judicial custody. Therefore, it is imperative for the detaining authority to consider whether there is a likelihood of the detenu being released from judicial custody and whether in such an event he is likely to repeat the offences. In our opinion, unless these aspects are considered and weighed with the detaining authority, the detention order does not stand judicial scrutiny, as, such an order discloses total non-application of mind.”

In the present case, as already observed though the detenu succeeded in obtaining bail in three criminal cases, in Crime No.178 of 2016 of Begumpet Police Station, his bail application was dismissed. Though two months had elapsed since the dismissal of

the said application before the impugned detention order was passed, the detenu has not made any fresh attempt to obtain bail. Admittedly, as on the date of passing of the impugned detention order, the bail application of the detenu was not pending. Therefore, on the facts of the case, there was no reasonable possibility of the detenu obtaining bail as on the date of passing of the impugned detention order. As such we are of the opinion that respondent No.2 did not make proper application of mind in weighing reasonable possibility of the detenu coming out on bail.

For the above mentioned reasons, the impugned detention order passed by respondent No.2 cannot be sustained and the same is accordingly set aside.

The Writ Petition is, accordingly, allowed.

As a sequel to disposal of the writ petition, W.P.M.P.No.45972 of 2016, shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

J.UMA DEVI, J

Dt: 06.06.2017
Gsn.