

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**WRIT PETITION No. 24431 OF 2017**

**DATED 07<sup>th</sup> FEBRUARY, 2018**

Between:

Pabba Saritha

... Petitioner

AND

The State of Telangana,  
Rep. by its Principal Secretary (Political),  
G.A.D. (Spl. Law & Order),  
Secretariat, Hyderabad, and another

... Respondents

Counsel for the petitioner : Sri P.Raja Sripathi Rao

Counsel for the respondents : G.P. for Home (T.S.)

THE COURT MADE THE FOLLOWING

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

This Writ Petition is filed for issue of *habeas corpus* for setting aside proceedings No. C/1123/2017 dated 08-06-2017 of respondent No. 2.

2. We have heard learned counsel for both parties and perused the record.

3. One Pabba Ramesh (hereinafter referred to as 'the detenu'), the husband of the petitioner, is an accused in crime No. 370 of 2016 registered on 23-10-2016 of Prohibition and Excise Station, Sangareddy, on the accusation that 1 ½ kilograms of some silver colour powder, which was later detected as Alprazolam, was recovered from his possession. However, the detenu was not arrested in connection with the said crime. On 13-05-2017 and 14-05-2017, two more criminal cases were registered, namely; crime Nos. 80 and 81 of 2017 on the file of Prohibition and Excise Station, Andole, Sangareddy District, respectively. The detenu is accused being in possession of 2 kilograms of similar contraband in connection with crime No. 80 of 2017 and 5 kilograms of similar contraband in connection with crime No. 81 of 2017. The detenu was arrested on 14-05-2017 in connection with crime No. 81 of 2017

and he was sent to judicial remand. While he was lodged in District Jail, Sangareddy District, the impugned preventive detention order came to be passed.

4. At the hearing Smt. G.Jhansi, learned counsel for the petitioner, has advanced several submissions. However, she emphasized on the fact that the impugned detention order is a result of complete non-application of mind as respondent No. 2 was under the impression that the detenu was earlier released on bail and that therefore there is a chance of his release in connection with the present cases also. She has further submitted that for the first time, the detenu was arrested on 14-05-2017 in connection with crime No. 81 of 2017 and that as on the date of passing of the order of detention, he was not released on bail. Learned Government Pleader for Home (T.S.) has submitted that the detenu was released on bail on 15-06-2017 in connection with crime Nos. 80 and 81 of 2017 of Prohibition & Excise Station, Andole, Sangareddy District.

5. Leaned counsel for the petitioner has invited this Court's attention to the following portion of the impugned detention order:

*"I am aware that you are under Judicial remand at District Jail, Sangareddy in Crime No. 370/2016, dt. 23-10-2016 of Prohibition and Excise Station, Sangareddy, Cr.No. 80/2017, dt. 13-5-2017 and Cr.No. 81/2017, dt. 14-5-2017 of Prohibition & Excise Station, Andole. There is every chance of your release as in previous cases and you again commit the offence. Hence passing of detention orders is essential."*

Learned Government Pleader has not disputed the fact that as on the date of the impugned detention order, the detenu has not secured any bail. Therefore, respondent No. 2 formed an incorrect opinion that as the detenu was released in previous cases, there is every chance of his release in other cases also. It is trite position of law that before an order of preventive detention is passed, the detaining authority must apply his mind and in a case where the detenu is in judicial custody, he must arrive at a satisfaction based on cogent material that there is a chance of the detenu being released on bail. In the instant case, respondent No. 2 proceeded on an erroneous assumption that the detenu was already released on bail in previous cases. Thus, the satisfaction arrived at by him that the detenu is likely to come out on bail is based on an incorrect fact. As the detention order was passed on a wrong assumption of fact, the same suffers from non-application of mind.

6. The impugned detention order is accordingly set aside. The Writ Petition is allowed. The detenu shall be forthwith set at liberty if he is not required in any criminal case.

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***C.V.NAGARJUNA REDDY, J.***

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***GUDISEVA SHYAM PRASAD, J.***

Date: 07-02-2018.

JSK

