

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Petition No.25746 of 2017

DATED:31-01-2018

Between:

Syed Mohiyuddin ... 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. Suryaprakasa Rao, Special Government Pleader (AP)

THE COURT MADE THE FOLLOWING:

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

This writ petition is filed for issue of habeas corpus by declaring proceedings vide REV-CSECOPDL(PRC)/5/2017-D.TH(C7), dt.13.06.2017 of respondent No.2, as confirmed by G.O. Rt. No.1372, General Administration (Law and Order) Department, dt.21.06.2017, as illegal and unconstitutional.

2. Mr. D. Purna Chandra Reddy, the learned counsel for the petitioner, who is the father of the detenu, submitted that on the date of detention the detenu was in judicial custody and that respondent No.2 in his detention order has not recorded his satisfaction that there is a reasonable possibility of the detenu being released on bail. He relied upon the order of this Court in **K. Nandini v. State of Andhra Pradesh**¹ in support of his submission that failure to record the satisfaction that the detenu is likely to be released on bail would make the detention order illegal. In the impugned order, respondent No.2 has stated as under:

“..If he is released on bail, again he will go for underground and continue his illegal activities. He doesn't have any respect towards law and his activities could not be controlled just by invoking the normal legal procedure.”

3. In **K. Nandini** (1 supra), this Court while dealing with an identical case quashed the detention order relying upon the

¹ W.P. No.38728 of 2016, dt.14.6.2017.

judgment of the Supreme Court in **N. Meera Rani v. Government of Tamil Nadu**² wherein it was *inter alia* held as under:

“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, 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.”

After extracting the above portion of the judgment in **N. Meera Rani** (2 supra) this Court held as under:

“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.”

As could be seen from the above reproduced part of the impugned order, as in the case of **K. Nandini** (1 supra), in this case also respondent No.2 has not recorded his satisfaction that the detenu is likely to be released on bail.

² (1989) 4 SCC 418

4. The learned Special Government Pleader (AP) submitted that though respondent No.2 in the impugned order has not formally referred to his satisfaction that the detenu is likely to be released on bail, in his counter he has made an averment in this regard. We are afraid, we cannot accept this submission. Preventive detention being an exception to Articles 21 and 22(1) and (2) of the Constitution of India, the detaining authority must record his satisfaction as on the date of passing of the detention order. If we accept the submission of the learned Government Pleader, every detention order would pass muster based on the subsequent pleadings of the detaining authority filed in support of the detention order. Such a course cannot be permitted against a person whose personal liberty is sought to be curtailed by the State.

5. In **Commissioner of Police, Bombay v. Gordhandas Bhanji**³, the Supreme Court held that the order of a public authority must be only supported by the reasons contained therein and not on the reasons supplemented by way of subsequent pleadings. In this context, the following part of the said judgment is relevant.

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations

³ AIR 1952 SC 16

subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

This view was reiterated by the Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner**⁴. While the aforementioned two judgments were rendered while dealing with the ordinary legal rights of citizens, the ratio laid down therein applies with more vigour in a matter concerning the personal liberty of a citizen.

6. For the aforementioned reasons, the writ petition is allowed and the impugned detention order, as confirmed by respondent No.1, vide G.O. Rt. No.1372, dt.21.06.2017, is set aside. The detenu is directed to be released from the detention forthwith, if he is not required in any other case.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

31-1-2018

bmr

⁴ (1978) 1 SCC 405