

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION NO.5583 OF 2018

ORDER: (per Hon'ble Sri Justice T.Amarnath Goud)

This writ petition is filed seeking issuance of a Writ of Habeas Corpus directing the respondents to produce Gundala Shankar, now detained in Central Prison, Kadapa, YSR Kadapa District, before this Court and to release him forthwith, after declaring the order of detention dated 30.11.2017 passed by the Collector and District Magistrate, Kadapa, YSR Kadapa District, second respondent herein, under Section 3(1) & (2) read with Section 2(a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, the Act), confirmed by the Government of Andhra Pradesh, *vide* G.O.Rt.No.177, dated 29.01.2018, as illegal.

2. The order of preventive detention dated 30.11.2017 passed by the second respondent, in exercise of power under Section 3 of the Act was approved by the Government of Andhra Pradesh, *vide* G.O.Rt.No.2721 dated 07.12.2017. Thereafter, upon consideration of the report submitted by the Advisory Board, constituted under Section 9 of the Act, the Government of Andhra Pradesh confirmed the detention of the *detenu* for a period of 12 months from 01.12.2017, *vide* G.O.Rt.No.177, dated 29.01.2018.

3. The grounds for detention appended to the order of detention dated 30.11.2017 reflect that the detaining authority took into account ten criminal cases involving the *detenu* for forming the subjective satisfaction that he needed to be detained in exercise of power under the Act. In the grounds of detention, the second respondent noted that the material placed before him revealed that the *detenu* was indulging in illicit felling of red sander trees by entering into reserve forest, dressing them into logs, theft, illegal transportation to other States to gain huge illegal money, smuggling of red sander wood logs, assault and attempt murder of the officials or abetment of the above offences which are dangerous to rare and pristine forest wealth and also prejudicial to the maintenance of public order.

4. The grounds of detention which were served on the *detenu* refer to the following eight crimes:

(i) Crime No.47/2015 dated 10.06.2015 on the file of Chitvel Police Station, registered for the offences punishable under Sections 147, 148, 307, 353, 379, r/w Section 34 IPC, Section 20(1) C (iii), (vi), Section 29 (4) (b) of the A.P. Forest Act, 1967, Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and Section 3 of the Prevention of Damage to Public Property Act, 1984.

(ii) Crime No.117/2015 dated 23.09.2015 on the file of Chennur Police Station, registered for the offences punishable under Section 379 IPC, Section 20(1) C (x), Section 29 (4) & 68 of the A.P. Forest Act, 1967, Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969, Section 3 of the Prevention of Damage to Public Property Act, 1984 and Section 51 of the Wild Life Protection Act, 1972.

(iii) Crime No.28/2016 dated 26.02.2016 on the file of Railway Kodur Police Station, registered for the offences punishable under Sections 147, 148, 353, 307, 379 r/w Section 149 IPC, Sections 20(1) C (ii) (iii) (iv), (vi), Section 29 (4) (b) of the A.P. Forest Act, 1967, Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and Section 3 of the Prevention of Damage to Public Property Act, 1984.

(iv) Crime No.32/2016 dated 09.03.2016 on the file of Railway Kodur Police Station, registered for the offences punishable under Sections 147, 148, 353, 307, 379, 120 (b) r/w Section 149 IPC, Sections 20(1) C (ii) (iii) (iv), (vi), Section 29 (4) (a) of the A.P. Forest Act, 1967, Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and Section 3 of the Prevention of Damage to Public Property Act, 1984.

(v) Crime No.67/2016 dated 30.06.2016 on the file of Chapadu Police Station, registered for the offences punishable under Sections 147, 148, 379, 307, 353, 120(b), 109 r/w Section 149 IPC, Sections 20(1) C (ii) (iii) (iv) (vi) (x), Section 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b) of the A.P. Forest (Amendment) Act, 2016 (A.P. Act No.15 of 2016), Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and Section 3 of the Prevention of Damage to Public Property Act, 1984.

(vi) Crime No.127/2016 dated 24.09.2016 on the file of Khajipet Police Station, registered for the offences punishable under Sections 379 r/w Section 34 IPC, Sections 20(1) C (ii) (iii) (iv) (vi) (x), Section 29 (2) (b) (4) (a) (b) of the A.P. Forest Act, 1967, Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and Section 3 of the Prevention of Damage to Public Property Act, 1984.

(vii) Crime No.180/2016 dated 08.12.2016 on the file of Railway Kodur Police Station, registered for the offences

punishable under Sections 379, 109, 120(b) r/w Section 34 IPC, Sections 20(1) C (ii) (iii) (iv) (vi), Section 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b) of the A.P. Forest (Amendment) Act, 2016 (A.P. Act No.15 of 2016), Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and Section 3 of the Prevention of Damage to Public Property Act, 1984.

(viii) Crime No.34/2017 dated 24.03.2017 on the file of Nandalur Police Station, registered for the offences punishable under Sections 147, 148, 379, 307, 353, 109, r/w Section 149 IPC, Sections 20(1) C (ii) (iii) (iv) (vi) (x), Section 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b), Section 44 (2) of the A.P. Forest (Amendment) Act, 2016 (A.P. Act No.15 of 2016), Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969, Section 3 of the Prevention of Damage to Public Property Act, 1984 and Section 51 of the Wild Life Protection Act, 1972.

(ix) Crime No.149/2017 dated 09.07.2017 on the file of Nandalur Police Station, registered for the offences punishable under Sections 147, 148, 379, 307, 353, 109, 120(b) r/w Section 149 IPC, Sections 20(1) C (ii) (iii) (iv) (vi) (x), Section 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b), Section 44 (2) of the A.P. Forest (Amendment) Act, 2016 (A.P. Act No.15 of 2016), Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969, Section 3 of the Prevention of Damage to Public Property Act, 1984 and Section 51 of the Wild Life Protection Act, 1972.

(x) Crime No.198/2017 dated 17.07.2017 on the file of Railway Kodur Police Station, registered for the offences punishable under Sections 147, 148, 379, 307, 353, 109, 120(b) r/w Section 149 IPC, Sections 20(1) C (ii) (iii) (iv) (vi) (x), Section 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b), Section 44 (2) of the A.P. Forest (Amendment) Act, 2016 (A.P. Act No.15 of 2016), Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969, Section 3 of the Prevention of Damage to Public Property Act, 1984.

5. The *detenu* was given a right to make a representation against his detention, to the detaining authority, the Advisory Board and also to the Government of Andhra Pradesh.

6. Sri D.Purna Chandra Reddy, learned counsel for the petitioner, contended that the order of detention is liable to be set aside on the short ground that the detaining authority did not satisfy himself as to the likelihood of the *detenu* being released on bail, though he was aware of the fact that the *detenu* was housed in Central Prison, Kadapa, YSR Kadapa District, in connection with the cases cited as the grounds for detention. He placed reliance on an unreported judgment of this Court in W.P.No.15481 of 2017 dated 10.10.2017.

7. The learned Advocate General (Andhra Pradesh), appearing on behalf of the respondents, would contend that the satisfaction of the detaining authority was based on the material placed before him, as the *detenu* is habitually engaged himself in unlawful bootlegging activities. He would further submit that the *detenu* is repeatedly involving in illicit felling of red sander trees by entering into reserve forest, dressing them into logs, theft, illegal transportation to other States to gain huge illegal money, smuggling of red sander wood logs, assault and attempt murder of the officials or abetment of the above offences which are dangerous to rare and pristine forest wealth and also prejudicial to the maintenance of public order and that the order of detention is valid and does not necessitate interference.

8. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of the *detenu* acting in a manner similar to his past acts and preventing him by detention from so doing in near future attracting the provisions of the Act. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstance and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to prevent him from so acting.

9. In **Champion R.Sangma V. State of Meghalaya**¹, the Supreme Court took note of the principles laid down by it earlier in **Kamarunnisa V. Union of India**² to the following effect:-

“13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would be all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if

¹ (2015) 16 Supreme Court Cases 253

² (1991) 1 SCC 128

bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in **Ramesh Yadav** was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to draw since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the *detenus* were in custody.”

Applying the aforesaid triple requirement test, the Supreme Court invalidated the order of detention as no satisfaction had been recorded by the detaining authority that there was reliable material placed before him on the basis of which he had reason to believe that there was a real possibility of release of the *detenu* on bail.

10. The learned Advocate General further contended that the detaining authority was well aware of the full facts and having subjectively satisfied himself that there was a real likelihood of the *detenu* being enlarged on bail and in anticipation thereof, the order of detention was passed. However, we are not impressed. The detaining authority failed to satisfy the second limb of the triple requirement test, i.e., that he had reason to believe on the basis of reliable material placed before him that there was a real possibility of the *detenu* being released on bail and that on being

so released, he would in all probability indulge in prejudicial activities.

11. In the case on hand, we find that the detaining authority in the impugned order, did not, in fact, satisfy himself as to the essential requisite of the likelihood of the *detenu* being enlarged on bail. Therefore, the order of detention dated 30-11-2017, which stood confirmed thereafter by the Government of Andhra Pradesh, is vitiated on the aforesaid grounds and cannot be sustained.

12. The writ petition is accordingly allowed setting aside the order of detention dated 30.11.2017 passed by the Collector and District Magistrate, Kadapa, YSR Kadapa District, confirmed under G.O.Rt.No.177, dated 29.01.2018. The *detenu*, Gundala Shankar, S/o. Panchalaiah, shall be set at liberty forthwith from the Central Prison, Kadapa, YSR Kadapa District, unless his detention is required in connection with any other case. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: -05-2018
TJMR