

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

Writ Petition No.6569 of 2018

DATED:06-06-2018

Between:

Ummaka Sivaiah ... 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. Purnachandra Reddy,
for Mr. Suresh Kumar Reddy Kalava

COUNSEL FOR THE RESPONDENTS: Mr. C.S. Suryaprakasha 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 to declare the proceedings in Ref.C1/601/M/2017, dt.30.11.2017, of respondent No.2, as confirmed by respondent No.1 vide G.O. Rt. No.179 General Administration (SC.I) Department, dt.29.01.2018, as illegal and unconstitutional, and consequently to direct respondent No.4 to produce Ummakka Sivakah (hereinafter referred to as "the alleged detenu"), before this Court and set him at liberty.

2. Though several grounds have been raised in the writ petition, at the hearing, Mr. D. Purnachandra Reddy, representing Mr. Suresh Kumar Reddy Kalava, learned counsel for the petitioner, mainly advanced the submission that despite the fact that the alleged detenu was in judicial custody in connection with various criminal cases, respondent No.2 - detaining authority has not recorded his satisfaction that there is a likelihood of the detenu securing bail and repeating the commission of the offences after his release.

3. The fact that the impugned detention order does not refer to the subjective satisfaction of the detaining authority on the abovementioned aspect is not disputed by the learned Special Government Pleader (AP). He, however, sought to rely upon the averments in the counter affidavit wherein for the first time such satisfaction has been recorded.

4. It is settled legal principle that where the detaining authority does not record his satisfaction that the detenu, who was in judicial custody at the time of passing the detention order, is likely to be released on bail and repeat the offences disturbing the public order, such order is not sustainable in law (See **N. Meera Rani v. Government of Tamil Nadu**¹).

5. While repelling a similar stand taken by the learned Special Government Pleader based on the averments in the counter affidavit, a Division Bench of this Court, speaking through one of us (Justice C.V. Nagarjuna Reddy), in judgment dt.31.01.2018 in W.P. No.25746 of 2017 (Syed Mohiuddin v. State of Andhra Pradesh) observed as under:

“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**², 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 subsequently given by the officer making the order of what he

¹ (1989) 4 SCC 418

² AIR 1952 SC 16

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**³. 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.

This view was reiterated by a Division Bench of this Court in judgment dt.17.4.2018 in W.P. No.43533 of 2017 (Bodduluri Padma v. State of Andhra Pradesh).

6. In the light of the admitted fact that the impugned detention order does not contain the subjective satisfaction as referred to above and the legal position as stated above, the same cannot be sustained and is accordingly set aside. The detenu is directed to be released from the detention forthwith, if he is not required in any other case.

7. The writ petition is accordingly allowed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

06-06-2018

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³ (1978) 1 SCC 405