

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

WRIT PETITION No.30435 of 2017

Date: 20.02.2018

Between :

G. Revathi

... Petitioner

And

The State of Telangana,
rep. by its Principal Secretary (GAD),
General Administration Department,
Secretariat Buildings, Hyderabad and others.

... Respondents

COUNSEL FOR PETITIONER : Sri CH. Dhananjaya, Advocate for
Sri D. Suryanarayana

COUNSEL FOR 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 declaring the order of detention vide proceedings No.SB(I).No.148/PD/S-1/2017, dated 07.07.2017 issued by respondent No.2, whereby he has detained one G. Nagaraju, husband of the petitioner (hereinafter referred to as “the detenu”) under the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances & Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (for brevity “the Act”).

At the hearing, Sri CH. Dhanamjaya, learned counsel for the petitioner, submits that though the detenu was involved in 4 cases under the NDPS Act and 2 cases were included in the grounds of detention, respondent No.2 has, however, placed heavy reliance on the fact that the detenu was granted bail in Crime No.397/2015 of Hayathnagar Police Station and that there is every likelihood of his release from the judicial custody soon by furnishing sureties in the said case. Having placed such heavy reliance on the bail granted in Crime No.397/2015, learned

counsel for the petitioner submitted, respondent No.2 has not furnished the material, including the bail order in Crime No.397/2015 to the detenu.

The learned Government Pleader for Home (T.S.), while fairly not disputing the fact that the material, including the bail order in Crime No.397/2015, was not furnished to the detenu, however, stated that since 2 crimes viz., Crime Nos.113/2017 and 153/2017 of Osmania University Police Station alone were included in the grounds of detention, there was no necessity for respondent No.2 to furnish material in Crime No.397/2015.

In support of his submission, learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in **LALLUBHAI JOGIBHAI PATEL v. UNION OF INDIA**¹. In para-18 of the said judgment, the Apex Court held as under:

“In the instant case, the materials and documents which were not supplied to the detenu were evidently a part of those materials which had influenced the mind of the detaining authority in passing the order of detention. In other words, they were a part of the basic facts and materials, and therefore, according to the ratio of Smt. Icchu Devi's case should have been supplied to the detenu ordinarily within five days of the order of detention, and, for exceptional reasons to be recorded, within fifteen days of the commencement of detention. In the counter-affidavit, it has not been asserted that these documents, which were not supplied, were not relevant to the case of the detenu.”

The learned Government Pleader, however, referred to and relied upon the judgment in **VINOD K. CHAWLA v. UNION OF**

¹ (1981) 2 SCC 427

INDIA² in support of his submission. In para-10 of the said judgment, the Apex Court observed as under:

“10. We would like to clarify here that the law does not require that every document or material in possession of sponsoring authority must necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority before the detaining authority, the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated. This view has been taken in several decisions of this Court. In [Abdul Sathar Ibrahim Manik v. Union of India & Ors.](#) AIR 1991 SC 2261, it was held as under :

‘If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non- application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.’

There is no dispute about the proposition of law that the detaining authority is under the legal obligation to supply all the material on which reliance has been placed in the detention order, which influenced the mind of the detaining authority for passing such order. However, the obligation to supply the material, which is merely referred and not relied upon, does not exist. The short point, therefore, to be decided is, whether respondent No.2 has merely referred to Crime No.397/2015 of Hayathnagar Police Station or relied upon the same?

In the impugned order of detention dated 07.07.2017, respondent No.2 has stated as follows:

“As he has moved bail petitions in Cr.Nos.1) 113/2017, 2) 153/2017 of Osmania University PS and 3) 397/2015 of

² (2006) 7 SCC 337

Hayathnagar PS and Hon'ble Magistrates concerned has granted bails to him in all the above 3 cases and he was released on bail in two cases of Osmania University PS, there is every likelihood of his release from judicial custody soon by furnishing sureties in Cr.No.397/2015 of Hayathnagar PS. On his release from judicial custody, there is every likelihood of his indulging in similar prejudicial activities, which are detrimental to public order, unless he is prevented from doing so by an appropriate order of detention."

Though in the grounds of detention, only Crime Nos.113/2017 and 153/2017 of Osmania University Police Station have been included, however, respondent No.2 has further stated as under:

"As you have moved bail petitions in Cr.Nos.1) 113/2017, 2) 153/2017 of Osmania University PS and 3) 397/2015 of Hayathnagar PS and Hon'ble Magistrates concerned have granted bails to you in all the above 3 cases and you were released on bail in the above two cases of Osmania University PS, there is every likelihood of your release from judicial custody soon by furnishing sureties in Cr.No.397/2015 of Hayathnagar PS. On your release from judicial custody, there is every likelihood of your indulging in similar prejudicial activities, which are detrimental to public order, unless you are prevented from doing so by an appropriate order of detention."

From the contents of the above reproduced portion of the detention order and the grounds of detention, it is quite evident that the fact of the detenu being involved in Crime No.397/2015 was not merely referred to, but also the further fact that bail was granted in the said case, and there is every likelihood of detenu being released from the judicial custody soon by furnishing sureties in pursuance of bail has also been referred to. In our opinion, while the former fact could be treated as a

mere reference, the latter fact amounts to the detaining authority placing reliance. In other words, the core reason for respondent No.2 to pass the detention order is the likelihood of the detenu furnishing sureties in Crime No.397/2015 in pursuance of the bail order granted therein and his being released on bail. Such being the undeniable position, we have no hesitation to hold that Crime No.397/2015 was not merely referred to, but also relied upon for passing the detention order. As admittedly, the bail order and the relevant material in Crime No.397/2015 were not furnished to the detenu, it cannot be said that no prejudice has been caused to him.

In VINOD K. CHAWLA (2 supra) on which reliance was placed by the learned Government Pleader, the question was whether the failure of the sponsoring authority in placing the fact of the detenu moving the bail application and the order refusing the bail before the detaining authority vitiates the formation of opinion and subjective satisfaction. While answering this question in the negative, the Supreme Court held that it will suffice if the detaining authority had the awareness of judicial custody of the detenu at the time of passing the detention order. This judgment has no relevance in the case on hand, as such a question does not arise in this case.

For the aforementioned reasons, the writ petition is allowed and the impugned detention order in SB(I).No.148/PD/S-1/2017, dated 07.07.2017, issued by respondent No.2 is set aside and

respondent No.2 shall release the detenu, forthwith, from detention, unless he is required in any other cases. No order as to costs.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

20.02.2018.

Msr



HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
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Msr