

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

WRIT PETITION No. 14521 of 2018

Date: 26th June, 2018

Between:

Jaya Prakash

... Petitioner

And

The State of A.P., and 2 others

... Respondents

COUNSEL FOR PETITIONER : Mrs. B. Mohana Reddy

COUNSEL FOR RESPONDENTS : Mr. C.S. Surya Prakash Rao,
Special G.P., for the respondents

THE COURT MADE THE FOLLOWING:

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

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 14521 of 2018

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

This writ petition is filed for issue of Habeas Corpus, directing the respondents to produce A.K. Subramani @ Tiruthani Mani @ Kattamani @ Mani S/o Late Appala Krishna Mandadi (for short, 'the detenu'), now detained at Central Prison, Kadapa, Y.S.R. District, before this Court and to set him at liberty by declaring his detention vide Rev.CSECOPDL(PRC)/11/2017-D.TH(C7) dated 30.01.2018 passed by the respondent No.2, and confirmed by respondent No.1 vide G.O.Rt.No.743 dated 04.04.2018, as illegal and arbitrary.

The only submission advanced by Mrs. B. Mohana Reddy, learned counsel for the petitioner, is that respondent No.2 did not record his subjective satisfaction that the detenu is likely to come out on bail and repeat similar offences.

Learned Government Pleader for Home submitted that the detenu is an accused in five cases only registered in Chittoor District coming within the jurisdiction of respondent No.2-detaining authority, and that in all five cases, the detenu was granted bail.

Mrs. B. Mohana Reddy, however, has drawn our attention to the following part of Ground No. (a) of the writ petition.

“The authority passed the detention order without showing proper awareness of the fact that the detenu is already in judicial custody as on the date of passing the detention order and that there is likelihood of he being released on bail/no apprehension of he coming out on bail in the near future as there is no cogent material before the detaining authority for passing the detention order. It is relevant to state here that without filing requisitions for execution of PT warrants in Cr.No.102/2016 of Koduru P.S., Cr.No.113/2016 of Mannanur P.S., Cr.No.67/2016 of Chapadu P.S. and Cr.No.452/2016 of Mydukur U/G.P.S., there is no likelihood of he coming out on bail in the near future, the present detention order is passed without considering all these aspects. The order of detention is liable to be set aside on this ground alone.”

Learned Government Pleader did not dispute the legal position as reflected in **N. Meera Rani v. Government of Tamil Nadu**¹, that, if the detaining authority does not record its subjective satisfaction that the detenu is likely to be released on bail and indulge in commission of similar offences after his release, the detention order cannot be sustained. He has, however, sought to justify absence of such satisfaction in the detention order on the ground that the four cases referred to in the above referred Grounds relate to the neighbouring district, Kadapa.

In **N. Meera Rani** (1 supra), the Supreme Court 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

¹ (1989) 4 SCC 418

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."

In our opinion, this submission of the learned Government Pleader has no merit. What is relevant to the detaining authority to consider is whether a person who is already in custody is likely to be released on bail and only if he is satisfied that there is such a possibility, he can pass a detention order so as to prevent him from being released and repeating the offences which are likely to disturb public order. Insisting on recording of such satisfaction is based on the fact that as the person is already in custody, there is no need for detaining him under the preventive detention laws. Therefore, the Courts, by way of various judicial pronouncements, have made it obligatory on the part of the detaining authority to record its satisfaction that there is a likelihood of the detenu being released on bail and repeat the offences.

In this view of the matter, it hardly makes a difference whether the cases are pending in a District over which the detaining authority has jurisdiction or in any other District. Therefore, failure of respondent No.2 to record his satisfaction referred to above renders the impugned detention order wholly illegal and unsustainable.

For the aforementioned reasons, the impugned detention order of respondent No.2 vide Rev.CSECOPDL(PRC)/11/2017-D.TH(C7) dated 30.01.2018, and confirmed by respondent No.1 vide G.O.Rt.No.743 dated 04.04.2018, is set aside, and the Writ Petition is allowed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

26th June, 2018

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