

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

WRIT PETITION No. 14511 of 2018

Date: 26th June, 2018

Between:

S. Saritha w/o C. Sunil

... 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. 14511 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 release of Guduru Chinnakan Sunil @ Guduru Abdul Rasool @ Bhai @ Arcot Bhai @ Suneel S/o Chinnakan @ Guduru Basha, the husband of the petitioner, (for short, 'the detenu'), after quashing of the detention order Reference No.C1/74/M/2018, dated 21.02.2018, of the respondent No.2, and the consequential confirmation orders of respondent No.1 passed after receiving the report of Advisory Board.

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.

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

"The authority passed an order of detention without recording his satisfaction as mentioned above. When his arrest was yet to be made in the remaining 10 crimes without filing requisitions for executing PT warrants the present detention order is passed without any cogent material that detenu is likely to be released on bail. Without taking all these essential facts into account the order of detention is passed mechanically without proper application of mind to the facts and circumstances of the case. 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, where, 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.

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 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, 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

¹ (1989) 4 SCC 418

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 Reference No.C1/74/M/2018, dated 21.02.2018, as confirmed by respondent No.1 after receipt of report of Advisory Board, is set aside, and the Writ Petition is allowed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

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ksm

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