

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

Writ Petition No.14693 of 2018

DATED:17-07-2018

Between:

Ahmed Riswan ... Petitioner

And

The State of Andhra Pradesh
Rep. by its Principal Secretary
(Home Department)
Secretariat, Amaravathi,
Andhra Pradesh
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. B. Kumar,
for Mr. B. Vijaysen Reddy

COUNSEL FOR THE RESPONDENTS: Mr. C. S.
Suryaprakasa 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 quash the order of detention passed by respondent No.2 in Ref. C1/170/M/2018, dated 19.3.2018 under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, and consequently set Ahamed Thambi Maideen (hereinafter referred to as “the alleged detenu”) at liberty.

2. Mr. Kumar, learned Senior Counsel representing Mr. B. Vijaysen Reddy, learned counsel for the petitioner, submitted that the alleged detenu was arrested on 24.08.2017, he was released on bail on 05.03.2018 and the impugned detention order was passed on 19.03.2018. Though several grounds have been raised in the writ petition, at the hearing, the learned counsel 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

¹ (1989) 4 SCC 418

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 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

² AIR 1952 SC 16

³ (1978) 1 SCC 405

detenu is directed to be released from the detention forthwith,
if he is not required in any other case or crime.

7. The writ petition is accordingly allowed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

17-07-2018

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