

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

WRIT PETITION No.15325 of 2018

25.07.2018

Between:

Nirmala

..Petitioner

and

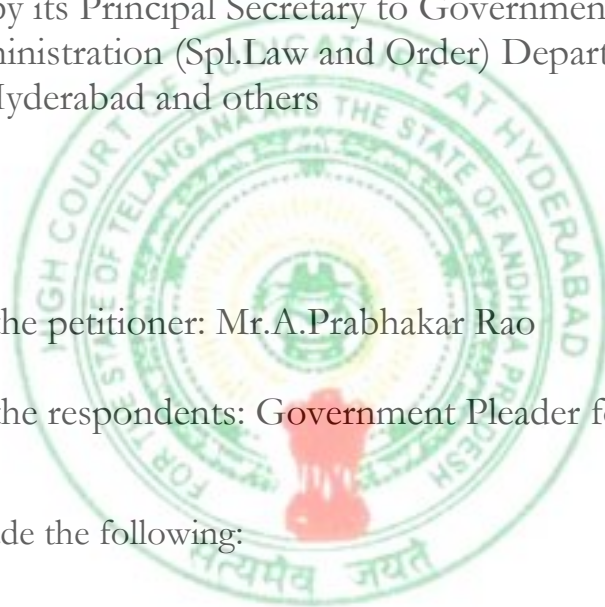
The State of Telangana,
represented by its Principal Secretary to Government (POLL),
General Administration (Spl.Law and Order) Department,
Secretariat, Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.A.Prabhakar Rao

Counsel for the respondents: Government Pleader for Home (T.S.)

The Court made the following:



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

The preventive detention of one Koli Santosh Kumar – the son of the petitioner, is challenged mainly on two grounds *viz.*, (i) that respondent No.2 – the detaining authority, did not have the bail orders and other relevant material before him in support of the satisfaction recorded by him in the impugned detention order to the effect that there is a genuine possibility of the release of the detenu in due course and indulging in similar activities, prejudicial to the maintenance of public order and that respondent No.2 has also not furnished copies of the bail orders to the detenu; and (ii) that the detenu being illiterate, the material based on which the impugned detention order was passed was not explained to him.

2. As regards the first ground, Mr.A.Prabhakar Rao, learned counsel for the petitioner, has laid strong emphasis on the judgments in **N.Meera Rani vs. Government of Tamil Nadu and another¹**, **Vasanthu Sumalatha vs. State of Andhra Pradesh and others²** and **Gattu Kavita vs. State of Telangana and others³**.

3. Opposing the above submissions, the learned Government Pleader for Home (T.S.) appearing for the respondents has placed

¹ (1989) 4 SCC 418

² 2016(2) ALD (CrI.) 156

³ 2017 (1) ALD (CrI.) 224

heavy reliance on the judgment of the Supreme Court in **Abdul Sathar Ibrahim Manik vs. Union of India**⁴.

4. We have considered the respective submissions of the learned counsel for the parties with reference to the record and the case law.

5. In the grounds of detention, respondent No.2 has, in all, relied upon as many as nine criminal cases. He has also stated therein as under.

“I am aware that you were arrested on 25-12-2017 by Pet Basheerabad Police, Cyberabad Commissioner in Cr.No.851/2007 of P.S. Pet Basheerabad and remanded to judicial custody, based on the confession of A1-A4. Your arrest was regularized on P.T. warrants in the remaining cases and remanded to judicial custody. Subsequently you filed bail petitions on 29-12-2017 in Cr.Nos.453/2017, 851/2017, 852 and 869/2017 of Pet Basheerabad P.S., vide Crl.M.P.Nos.1735/2017, 1727/2017, 1732/2017 and 1731/2017 and the same are pending for consideration. Further bail was already granted in Cr.No.547/2017 of P.S. Shamshabad, vide Crl.M.P.No.33/18 and ordered to be released on 10-1-2018 vide Dis.No.82/2018, also bail was granted in another Cr.No.1064/17 of P.S. Mailardevpally vide Crl.M.P.No.32/18 and ordered to be released on 10-1-2018 vide Dis.No.81/2018. And believe that there is a genuine possibility of your releasing on bail in due course and indulging in similar activities which are prejudicial to the maintenance of public order.” (emphasis added)

⁴ (1992) 1 SCC 1

The fact that the detenu secured bail in two cases registered for the offence punishable under Section 379 I.P.C. is not in dispute. The learned counsel for the petitioner has, however, argued that the said two cases, in which bail was granted, were for a lesser offence of theft, while the remaining cases pertain to more serious offence of robbery and that therefore, unless there is sufficient material for respondent No.2 to arrive at the satisfaction of the possibility of the detenu coming out on bail, the impugned detention order based on such satisfaction cannot be sustained.

6. In **N.Meera Rani** (1 supra), the Supreme Court summarised the principle as under.

“We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not, needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order

can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.”

The detention order in that case was set aside by the Supreme Court on the ground that though it, 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, there was, however, no indication therein that the detaining authority considered it likely that the detenu could be released on bail.

7. In **Vasanthu Sumalatha** (2 supra), a Division Bench of this Court held that all the basic facts and particulars, which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the detention order, must be communicated to the detenu so that the latter may have an opportunity of making an effective representation against the order of detention. It also held that the documents, statements or other material relied upon in the grounds of detention, must be communicated to the detenu, because they form part of the grounds, and the grounds furnished to the detenu cannot be said to be complete without them. It was further held that it would not, therefore, be sufficient to communicate to the detenu a bare recital of the grounds of detention.

8. The judgment in **Gattu Kavita** (3 supra) dealt with a case of a conditional bail order and following the judgment in **Vasanthu**

Sumalatha (2 supra), another Division Bench of this Court held that non-supply of such conditional bail order vitiates the detention order.

9. A Division Bench of this Court, speaking through one of us (CVNR,J), considered an identical case in **Muppidi Swapna vs. State of Telangana**⁵, the submissions of the counsel and the findings rendered therein, to the extent they are relevant, are reproduced herein below.

“SUBMISSIONS OF THE COUNSEL.

4. Mr.A.Prabhakara Rao, learned counsel for the detenu, contended as under.

(i)...

(ii) That the detaining authority has referred to and relied upon the bail orders in the criminal cases against the detenu, but the same were not furnished to him, thereby the whole detention order is rendered invalid. In support of his submissions, he has relied upon the judgments in [M. Ahamedkutty v. Union of India and another](#)⁶, [Maitreyee Banerjee v. Prabir Kumar Mukherjee](#)⁷, [Icchu Devi Choraria v. Union of India and others](#)⁸, [S. Sattu v. Government of Andhra Pradesh](#)⁹, [Rushikesh Tanaji Bhoite v. State of Maharashtra and others](#)¹⁰, [State of U.P. v. Kamal Kishore Saini](#)¹¹, and [Sunila Jain v. Union of India and another](#)¹².

⁵ 2016 (4) ALT 520 (D.B.)

⁶ (1990) 2 SCC 1

⁷ (1982) 3 SCC 216

⁸ (1980) 4 SCC 531

⁹ 2013 (3) ALT (CrI.) 303 (DB) (AP)

¹⁰ 2012 (2) ALT (CrI.) 14 (SC) = (2012) 2 SCC 72

¹¹ (1988) 1 SCC 287

¹² (2006) 3 SCC 321 = 2006(5) ALT 3.2 (DN SC)

5. Countering the submissions of the learned counsel for the detenu that non-supply of bail orders vitiated the detention order, the learned Government Pleader drew a distinction between 'reference to' and 'reliance on' the material in the detention order and submitted that unless the detention order is passed placing reliance on the material, mere reference thereto will not vitiate the detention order, even if such material is not supplied to the detenu. He has further submitted that the Court will not set aside the detention order in every case of non-supply of material unless it is satisfied that such non-supply caused prejudice to the detenu. In support of these submissions, he has relied on the judgments in [Vinod K. Chawla v. Union of India and others](#)¹³, [State of Tamil Nadu and another v. Abdullah Kadher Batcha and another](#)¹⁴ and [J. Abdul Hakeem v. State of Tamil Nadu and others](#)¹⁵.

8. We shall now deal with the second contention of the learned counsel for the detenu.

The fulcrum of the argument of the learned counsel for the detenu is that the bail orders, on which reliance was placed by respondent No.2 in passing the order of detention, were neither placed before him nor copies thereof were supplied to the detenu and thereby the detention order is vitiated. He has further submitted that though the bail orders were obtained by the detenu himself and even if he knew the contents thereof, respondent No.2 is bound to furnish the copies of the same. He has placed heavy reliance on the judgment in M.

¹³ 2007 (2) ALT (CrI.) 40 (SC) = (2006) 7 SCC337

¹⁴ 2009 (1) ALT (CrI.) 259 (SC) = (2009) 1 SCC 333

¹⁵ 2006 (1) ALT (CrI.) 39 (SC) = (2005) 7 SCC 70

Ahamedkutty (supra), wherein the Supreme Court held as under:

"It is immaterial whether the detenu already knew about their contents or not. [In Mehrunissa v. State of Maharashtra](#) [(1982) 3 SCC 216] it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. [In Mohd. Zakir v. Delhi Administration](#) [1975] 2 SCC 81] it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention *pari passu* the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in [Article 22\(5\)](#)." (emphasis supplied)

The ratio that could be culled out from the judgment in M. Ahamedkutty (supra) as well as in Mehrunissa, referred to and relied upon in M. Ahamedkurry (supra), is that even if the detenu was aware of the contents of the documents, non-furnishing of the same is fatal, if those documents are 'relied on and referred to' in the order of detention and in the grounds of detention.

In *Ichhu Devi Choraria* (supra), the Supreme Court reiterated this position in paragraph 7 of the judgment observing that the detaining authority was bound to supply the copies of the documents, statements and other materials relied upon in the grounds of detention, to the detenu.

Dealing with the contention that non-consideration of application for bail by the detaining authority was fatal, the Supreme Court in *Sunila Jain* (supra) after referring to the earlier judgments in *M. Ahamedkutty* (supra) and [P.U. Abdul Rahiman v. Union of India](#)¹⁶ observed that whether a detenu on the date of the passing of the order of detention was in custody or not would be a relevant fact, that it would also be a relevant fact whether he is free on that date and if he is, whether he is subjected to certain conditions pursuant to and in furtherance of the order of bail. That if pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be a relevant consideration for the purpose of passing an order of detention, but the converse is not true. The Court has applied the following twin-tests to know whether the constitutional mandate in the matter of preventive detention is violated (i) Whether the impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (ii) Whether relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority. The Supreme Court held that the application for bail was not a vital document and non-supply of copies of the same did not vitiate the detention.

¹⁶ 1991 Supp. (2) SCC 274

In Maitreyee Banerjee (supra) the preventive detention order was set aside on the ground that the documents regarding the facts mentioned in the grounds of detention referred to and relied upon by the detaining authority were not admittedly furnished to the detenu at the time the grounds were served on him. Relying upon the judgments from *Ichhu Devi Choraria* (supra) to *Kamla Kanyalal Khushalani v. State of Maharashtra*¹⁷ the Supreme Court held that the question of the detenu demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to furnish documents relied on or referred to in the order of detention *pari passu* the grounds of detention in order that the detenu may make an effective representation immediately, instead of waiting for the documents to be supplied with.

The judgments referred to above thus unequivocally laid down that irrespective of whether a detenu requests for supply of any document or not, it is the constitutional duty and obligation of the detaining authority to furnish all those documents which were referred to and relied upon in the detention order, *pari passu* the grounds of the detention order.

9. We, however, notice a line of cases where the Supreme Court declined to interfere with the orders of detention on the ground of non- supply of the documents which were referred to but not relied upon for the purpose of passing detention orders.

In *Radhakrishnan Prabhakaran v. State of Tamil Nadu*¹⁸ the Supreme Court drew a distinction between the

¹⁷ (1981) 1 SCC 748

¹⁸ (2000) 9 SCC 170

documents 'relied upon' and the documents 'referred to' in the order. In paragraph 8 of the report, it was observed: "We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him." This view was reiterated by the Supreme Court in J. Abdul Hakeem (supra).

A constitution Bench of the Supreme Court in Abdullah Kadher Batcha (supra), has reiterated the same view with the following observations.

"The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (sic not) been supplied, they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the

detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced."

In the context of the present case, reference to the above precedents will suffice and this Court does not propose to burden this judgment by multiplying references to the judgments taking similar view.

Keeping in view the above ratio, it has to be seen whether the bail orders, copies of which were not supplied to the detenu, were relied upon in the detention order. In the impugned detention order, respondent No.2 referred to the above mentioned seven criminal cases and observed that in all those cases the detenu was arrested and released on bail, as per the extant provisions under which the bails were granted, and that the department is unable to prevent the detenu from further indulging in unlawful activities affecting public health and public order. In the grounds of detention, the facts of each of the seven criminal cases were recorded and the opinion of the Chemical Examiner, Regional Prohibition and Excise Laboratory, Warangal, and the letter of the Professor of Medicine, MGM Hospital, Warangal were relied upon and it was observed that as the detenu was engaged in the sale of ID liquor, and his activities affect or are likely to affect adversely in maintenance of public order because they cause gave or widespread danger to the life and public health. Respondent No.2 further observed as under:

"It is, therefore, established that the cases booked against you under Prohibition and Excise laws failed to curb your illegal

activities, which are found to be dangerous to public health and also prejudicial to the maintenance of public order. You are, therefore, a "Bootlegger" as defined under section 2(b) of Andhra Pradesh Prevention of Dangerous Activities of Bootlegger, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

It is imperative to prevent you from acting in any manner prejudicial to maintenance of Public order. I feel that recourse to normal law would involve considerable time and may not be effective deterrent in preventing you from indulging in further activities prejudicial to maintenance of public order in and around Narsampet of Warangal District under Prohibition and Excise Station, Narsampet limits of Warangal District.

On careful consideration of material placed before me, I am satisfied that you are likely to repeatedly indulge in illegal storage and sale of illicitly distilled liquor in and around of Narsampet of Warangal District which is injurious to public health. The launching of prosecution of cases against you in the above mentioned cases is normal course under Prohibition Laws failed to have any desired impact on your clandestine, bootlegging activities since prosecution proceedings take sufficiently long period of time."

A careful reading and understanding of the above detention order and the grounds thereof would show that respondent No.2 has laid emphasis on the fact that mere registration of the criminal cases and his arrest in connection therewith is proving ineffective, as after being released on bail the detenu was repeating his illegal activities and thereby the ordinary laws are unable to curb his activities which are causing grave and widespread danger to life and public health. In our opinion, respondent No.2 merely referred to the bail orders and relied upon the fact of repetition of the illegal activities by the detenu after his release in every case. Thus, this is not a case where respondent No.2 has relied upon the bail orders for detaining the detenu.”

10. The facts in the present case as regards the factum of grant of bails in some cases and the satisfaction arrived at by the detaining authority that the detenu is likely to secure bails in other cases are almost identical to the facts in **Muppidi Swapna** (5 supra). In our opinion, **Muppidi Swapna** (5 supra) is a complete answer to the submissions of the learned counsel for the petitioner because as in that case, respondent No.2 in the present case has merely referred to the factum of the detenu having secured bail in two cases. Therefore, it necessarily means that respondent No.2 has merely referred to the fact of the detenu securing bail in two cases and he has not relied upon the contents thereof for the purpose of passing the impugned detention order.

11. With regard to the second ground, the petitioner has not raised specific pleading in this regard. However, we find from the record filed by the respondents, the following typed endorsement with the signature of the detenu underneath the endorsement.

“ACKNOWLEDGMENT”

Central Prison,
Cherlapally, Hyderabad,
Date: 16/01/2018

Received Detention Orders – Grounds of detention and the documents both in English and Hindi from the Commissioner of Police, Cyberabad vide Proceeding No.06/PD/CCRB/Cyb/2018, Dated: 12.01.2018 in the presence of the Jailor, Central Prison – Cherlapally and the same was readover and explained to me in my mother tongue.

Sd/-
Signature of Detenu
(Koli Santosh Kumar)”

The certificate of the Jailor/Jail Superintendent reads as under.

“Central Prison,
Cherlapally, Hyderabad,
Date:16/01/2018

This is to certify that the Detention Order – Grounds of detention issued by the Commissioner of Police, Cyberabad vide Proceeding No.06/PD/CCRB/Cyb /2018, Dated: 12.01.2018 of CP Office, Cyberabad both in English and Hindi language and the connected material have been served on the detenu Koli Santosh Kumar duly explaining with contents.”

The above material is sufficient to reject the second ground.

12. In the light of the above observations, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

25th July, 2018

GHN

