

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

Writ Petition No.17443 of 2018

DATED:04-07-2018

Between:

Kommu Venkateswarlu ... Petitioner

And

The State of Telangana
Rep. by its Principal Secretary
Home Department, Secretariat
Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. Nageswara Rao Repakula

COUNSEL FOR THE RESPONDENTS: G.P. for Home (TS)

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 by declaring G.O. Rt. No.716, dt.16.04.2018, of respondent No.2, confirming the detention order in proceedings No.04/PD-ACT/CCRB/RKD/2018, dt.05.02.2018, of respondent No.3, as illegal and arbitrary and to set aside the same, and consequently to direct to the respondents to release Mr. Kommu Pavan Kumar (for short, "the detenu") from the detention.

2. The detenu is an Engineering student, who is a habitual offender involved in chain snatching. It is the pleaded case of the State that between 18-3-2017 and 30-12-2017 the detenu has committed as many as eighteen offences involving chain snatching and he is figuring as accused in all those eighteen cases. It is for this reason that respondent No.3 has passed the impugned detention order. It is stated in the said order that in seventeen out of eighteen cases the detenu has obtained bail and that there is a likelihood of the detenu coming out on bail and repeating the activities which disturb the public order.

3. The learned counsel for the petitioner has placed heavy reliance on the judgment of the Supreme Court in **Sama Aruna**

v. State of Telangana¹ in support of his submission that if the apprehension of the detaining authority that there is a likelihood of the detenu being released on bail is correct, the State has to oppose the bail application and that merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail, an order of detention under the preventive detention law should not ordinarily be passed.

4. A Division bench of this Court in **Dilkush Singh Meena v. State of Telangana**², while considering the judgment in **Sama Aruna** (1 supra), distinguished the facts in that case with the facts in the former case and held as under:

“11. As regards the judgment in **Sama Aruna** (supra), the Supreme Court on the facts of the case found that the preventive detention was based on stale incidents, which is clearly evident from paragraphs 20 and 23 of the report, which are extracted hereunder:

“20. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute.

23. The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into account matters which ought not to have been taken into account.”

¹ 2017(2) ALT (CrL.) 375 (SC)

² 2018 (1) ALD (CrL.) 953

In paragraph 24 of the report, the Supreme Court relied upon the judgment in **Ramesh Yadav v. District Magistrate** [(1985) 4 SCC 232] for setting aside the preventive detention order and observed:

“24. There is another reason why the detention order is unjustified. It was passed when the Accused was in jail in Crime No. 221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In **Ramesh Yadav** (supra), this Court observed as follows:

6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.”

“12. Indeed, the judgment in **Ramesh Yadav** (supra) was considered by a three-Judge Bench of the Supreme Court in **N. Meera Rani** (AIR 1989 SC 2027) and described the above mentioned observations as ‘passing’ observations. In paragraph 19 of the report the Supreme Court observed as under:

“ In **Ramesh Yadav** (supra)] the detention order was passed when the detenu was in jail on the mere apprehension of likelihood of grant of bail on the basis of some stale grounds and a ground in respect of which the detenu had already been acquitted. It is obvious that even with the likelihood of grant of bail, the grounds of detention being stale or non-existent on the ground of the detenu's acquittal, they did not satisfy the required test of the detention order being based on valid grounds showing detenu's activities proximate in point of time to justify the detaining authority's satisfaction as reasonable. **It was observed in passing** that if the apprehension of the detaining authority about the likelihood of grant of bail was

correct then it was open to challenge the bail order in a higher forum. This observation has accordingly to be read in the context of the facts in which it was made.”

(emphasis added)

After review of the entire case law, the Supreme Court in **N. Meera Rani** (supra) summarized the settled principles in paragraph 22 which was reproduced hereinbefore.”

In our opinion, the facts in the present case are not similar to those in **Sama Aruna** (1 supra) and the observations in **Dilkush Singh Meena** (2 supra) aptly apply to this case as well.

5. Having regard to the nature of the offences allegedly committed by the detenu apart from his habitual nature to commit such offences, we are convinced that the activities of the detenu have the potential of disturbing public order and therefore we do not find any justification to interfere with the impugned detention orders. The writ petition is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

04-7-2018

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