

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE MS.JUSTICE J.UMADEVI

WRIT PETITION No. 26698 of 2017

ORDER: (Per Hon'ble Sri Justice C.Praveen Kumar)

1) The present writ petition came to be filed under Article 226 of the Constitution of India, seeking issuance of writ of habeas corpus directing the respondents herein to produce one Chamarthi Amarendra Raju S/o. Venkata Raju, now lodged in Central Prison, Kadapa, YSR District, before this Court and set him at liberty forthwith.

2) The facts in issue are as under:

The Collector/ District Magistrate, Kadapa, passed an order of detention on 17.05.2017 in exercise of powers conferred under Section 3 (2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act") on the ground that the *detenue* is a goonda within the meaning of Section 2 (g) of the Act and that his activities are dangerous to forest wealth and prejudicial to the maintenance of public order. On 24.05.2017 the Government approved the order of detention as contemplated under Section 3 (3) of the Act. Thereafter the matter was placed before the Advisory Board for its consideration and to submit a report to the Government under Section 11 (1) of the Act. The case was reviewed by the Advisory

Board on 16.06.2017 and reported that there was sufficient cause for detention of the *detenue*. Thereafter, vide G.O.Rt.No.1506, dated 11.07.2017, the Government confirmed the order of the detention passed by the second respondent-District Collector, detaining the *detenue* for a period of twelve months. The order and the grounds of detention served on the *detenue* refer to eight incidents, which are as under:

1. Crime No.1 of 2015 of Vontimitta P.S., dated 05.01.2015, registered for the offence punishable under Section 379 IPC (theft of national property), Section 20 (1) (c) (vi) & (x) of Andhra Pradesh Forest Act, 1967, Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969 and Section 3 of Prevention of Damage to Public Property Act, 1984.
2. Crime No.35 of 2015 of Vallur P.S., dated 15.06.2015, Under Section 379 IPC (Theft of National Property), 307, 353, 120 (b) read with 34 IPC, Section 20 (1) (c) (vi) & (x), 29, 29 (4) & 68 of Andhra Pradesh Forest Act, 1967, Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 51 of Wild Life Protection Act, 1972.
3. Crime No.1175 of 2015, Chennur P.S., dated 23.09.2015, Under Section 379 IPC (Theft of National Property), Section 20 (1) (c) (x), 29, 29 (4) & 68 of Andhra Pradesh Forest Act, 1967, Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 51 of Wild Life Protection Act, 1972.
4. Crime No.254 of 2015, Duvvur P.S., dated 08.11.2015, Under Section 147, 148, 307, 353, 379 (Theft of National Property), read with 149 IPC, Section 29 of

Andhra Pradesh Forest Act, 1967, Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984.

5. Crime No.28 of 2016, Railway Kodur P.S., dated 26.02.2016, Under Sections 147, 148, 353, 307 379 (Theft of National Property), read with 149 IPC, Section 20 (1) (c) (ii) (iii) (iv) & (vi), 29 (4) (b) of Andhra Pradesh Forest Act, 1967, Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984.
6. Crime No.107 of 2016, T.Sundupalli P.S., dated 11.07.2016, Under Section 147, 148, 379 (Theft of National Property), 307, 353, 120 (B), 109 read with 149 IPC, Section 20 (1) (c) (ii) (iii) (iv) (vi) (x), 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b) of A.P.Forest (Amendment) Act, 2016 (AP Act No.15 of 2016), Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 51 of Wild Life Protection Act, 1972
7. Crime No.169 of 2016, T.Sundupalli P.S., dated 06.11.2016, under Sections 147, 148, 379 (Theft of National Property), 307, 353, 120 (B), 109 read with 149 IPC, Section 20 (1) (c) (ii) (iii) (iv) (vi) (x), Section 20 (d) (i) (a) (b) (ii) (a) (b), Section 29 (2) (b) (4) (a) (i) (ii) (b) of A.P.Forest (Amendment) Act, 2016 (AP Act No.15 of 2016), Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984 and Section 51 of Wild Life Protection Act, 1972
8. Crime No.10 of 2017, Duvvur P.S., dated 29.01.2017, Under Section 379 IPC (Theft of National Property), 307, 353, 120 (B) 109 read with 34 IPC, Section 20 (1) (c) (ii) (iii) (iv) (vi) & (x), 29 (2) (b) (4) (a) (b) of

A.P.Forest Act, 1967, Rule 3 of A.P. Sandawood and Red Sanders Wood Transit Rules, 1969, Section 3 of Prevention of Damage to Public Property Act, 1984.

3) The said detention order came to be passed with a view to prevent the *detenue* from indulging in dangerous, clandestine and illegal activities prejudicial to the maintenance of public order and dangerous to forest wealth. Challenging the said detention order the present writ petition came to be filed.

4) It is said that the detention order came to be passed in mechanical manner without application of mind. It is urged that the *detenue* was arrested on 29.01.2017 in Crime No.10 of 2017 of Duvvur Police Station and pursuant to the confession made by him before the police, he has been implicated in other cases. It is pleaded that the *detenue* was granted conditional bail in Crime No.10 of 2017 on 17.03.2017, and though he was in jail, the detention order came to be passed on an apprehension of he getting himself released. It is also said that though the *detenue* was not shown as an accused in Crime Nos. 117 of 2015, 254 of 2015, 28 of 2016, 107 of 2016 and 169 of 2016, but these crimes were made the basis to pass detention order. It is further pleaded that the incidents in question relate to law and order problem and invoking the provisions of preventive detention, are un-warranted.

5) A counter came to be filed by the second respondent disputing the averments made in the affidavit filed in support of the writ petition. It is said that the *detenue* is an habitual offender, involved in offences of grave nature which are prejudicial to the

maintenance of public order. It is said that the provisions of Forest Act and other laws are found insufficient in ordinary course to deal firmly and he being a habitual offender indulging in looting of rare national wealth by operating through gangs in an organized manner and engaging the local villagers to commit the cutting and illegal theft of red sander wood from the Government owned reserved forest, his detention requires to be upheld. It is further stated that in spite of registration of crimes and arrest of the co-accused, the *detenue* concealed his presence to avoid arrest and continued to commit similar offences. It is said that the *detenue* was arrested in Crime No.35 of 2015 of Vallur Police Station on 15.06.2015 and thereafter sent to remand, but however he was granted bail by the Hon'ble High Court on 28.07.2015. Thereafter the *detenue* continued to involve himself in offences of this nature which lead to registration of Crime No.10 of 2017 in which he was arrested on 29.01.2017. Subsequently, he was granted bail by the II Additional Sessions Judge, Kadapa at Proddutur on 17.03.2017. Since there is every possibility of he coming out from jail and involve in offences of this nature, passing of detention order cannot be said to be illegal and violative of principles of natural justice.

6) A perusal of the material placed on record would show that the detention order was passed on 17.05.2017, which was approved by the Government on 24.05.2017. Thereafter the matter was placed before the Advisory Board on 16.06.2017, which after hearing the *detenue* and perusing the record, felt that there was

sufficient cause to continue with the detention of the *detenue*. The said order of Advisory Board was confirmed by the Government on 11.07.2017.

7) As stated earlier, the *detenue* is involved in eight cases. Out of which he was released on bail in two crimes. The last one being Crime No.10 of 2017. It is also not in dispute that though he was granted conditional bail in the month of March, 2017, he was in jail as on the date of passing of the detention order.

8) The main ground urged by the learned counsel for the petitioner is that the detaining authority was not aware that the *detenue* was in judicial custody as on the date of passing of the detention order. If the said fact was brought to the notice of the authority, probably he would not have passed the detention order since the likelihood of he coming out and committing offence of similar nature will not have arise. He further submits that the order and the grounds of the detention nowhere indicate the conditions imposed while granting bail. In the reply affidavit filed it is stated that the *detenue* was granted bail on 17.03.2017 with a condition that he shall report before the Station House Officer, Duvvur Police Station, on every Sunday in between 10.00 a.m., and 2.00 p.m., for a period of two months.

9) This being the position it is to see whether the detention order suffers from violation of law.

10) A perusal of the order of detention passed by the second respondent show that after referring to eight crimes in which the

detenue was shown as an accused, it has been stated that the police/forest officials of YSR District, have made attempts to arrest the accused ie. *detenue*, who now is residing at Sastry Nagar, Akkayapalli, Near ITI Circle, Kadapa City, but evading the arrest and concealing his presence, he is involving in offences of red sander trees felling. The order also refers to his release on bail on 17.03.2017, but however it does not indicate that the *detenue* was in jail even as on the date of passing of the detention order. A comprehensive reading of the order shows that even after release in Crime No.10 of 2017, the *detenue* continued to indulge in activities which are prejudicial to the maintenance of public order, but which appears to be incorrect.

11) It is to be noted that though the *detenue* was in custody as on the date of passing of the order, the second respondent directed the Superintendent, Central Prison, Kadapa, YSR District, to take over the *detenue* into his custody and lodge him in the Central prison, Kadapa, YSR District, until further orders from the Government. The conclusive portion of the order also indicates that the Superintendent of Police, YSR District, Kadapa, is directed to execute the order of detention against the *detenue*, who is now residing at Door No.1/ 156-1-2, Shasthri Nagar, Akkayapalli, Near ITI Circle, Kadapa city, by detaining the individual in Central Prison, Kadapa.

12) Further, a reading of the entire order of detention nowhere indicates the conditions imposed while granting bail. As stated earlier, while releasing the *detenue* on bail, a condition was

imposed stating that the *detenue* shall report before the S.H.O. once in a week on every Sunday.

13) In *Vasanthu Sumalatha v. State of Andhra Pradesh and others*¹, wherein a Bench of this Court held as under:

“Neither the order nor the grounds of detention refer either to the conditional or the unconditional orders of bail granted in favour of the detenus. As noted hereinabove failure of the detaining authority to consider the orders granting conditional bail would vitiate the orders of detention.”

14) In *Huidrom Konungjao Singh v. State of Manipur and others*² the Apex Court held as under:

“If the detention order is challenged the detaining authority has to satisfy the Court the following facts:

- 1) The authority was fully aware of the fact that the *detenue* was actually in custody.
- 2) There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.
- 3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated.”

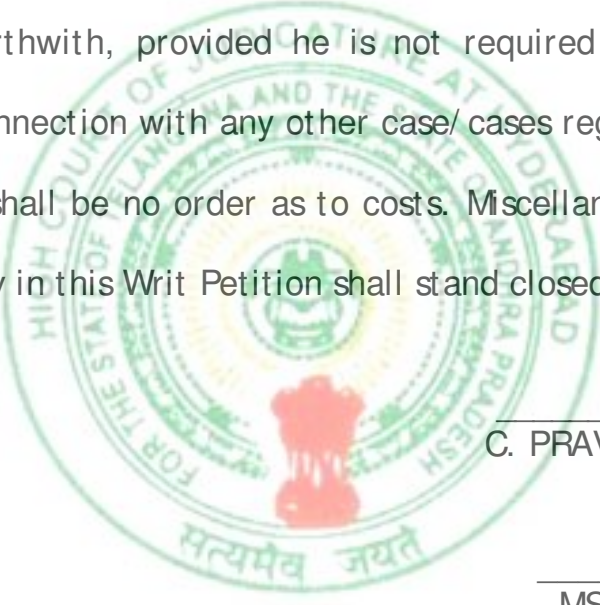
15) The fact that the *detenue* was released on bail with some conditions namely reporting before the concerned S.H.O., on every Sunday for a period of two months, which was in force as on

¹ (2016) 2 ALD (CrL.) 156

² (2012) 7 SCC 181

the date of passing of the detention order is not in dispute. If the detaining authority was aware about the order imposing conditions, it may have weighed with him in not passing the order of detention. Therefore, we feel that non-placing of the conditional bail order would amount to suppressing of a relevant material being placed before the detaining authority, which violates the fundamental right of the *detenu*.

16) For the aforesaid reasons, the Writ Petition is allowed and the impugned detention order is set aside and the detenu shall be set at liberty forthwith, provided he is not required to be kept in custody in connection with any other case/ cases registered against him. There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.



C. PRAVEEN KUMAR, J

MS. J. UMADEVI, J

29.03.2018
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