

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

WRIT PETITION No.30866 of 2017

Date: 20.02.2018

Between :

M. Gouri

... Petitioner

And

The State of Andhra Pradesh
rep. by its Chief Secretary,
Secretariat Buildings, Amaravathi at Velagapudi,
Guntur District and others.

... Respondents

COUNSEL FOR PETITIONER : Sri C.S. Surya Prakasha Rao

COUNSEL FOR RESPONDENTS : Spl. Government Pleader (AP)

THE COURT MADE THE FOLLOWING:

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

This writ petition is filed for issue of Habeas Corpus by quashing the proceedings Ref.No.C1/80/M/2017, dated 17.05.2017 issued by respondent No.2, as confirmed vide G.O.Rt.No.1507, General Administration (SC.I – L&O) Department, dated 11.07.2017 issued by respondent No.1.

The husband of the petitioner, by name Mude Mallikarjuna Naik (hereinafter referred to as “the detenu”) was detained under the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for brevity “the Act”). In the grounds of detention, 7 criminal cases have been mentioned, wherein the detenu is the accused. All these cases pertain to felling and sale of red sanders illegally.

At the hearing, Sri D. Purna Chandra Reddy, learned counsel for the petitioner, has mainly relied upon two grounds to question the detention order viz., (1) that though the detenu was granted bail only in Crime No.7/2017 of Pendlimarri Police Station, he continued to remain in judicial custody as he was not granted bail in other 5 cases, respondent No.2 has not made himself aware of the fact of the detenu being in judicial custody; and (2) that respondent No.2 also failed to record subjective satisfaction that the detenu is likely to be released on bail and on such release, he is likely to repeat commission of similar offences.

The learned Special Government Pleader for Home, representing the learned Advocate General for the State of Andhra Pradesh, has drawn attention of the Court to the following portion of the detention order, which reads as under:

“1) The Sub-Inspector of Police, Pendlimarri PS arrested the accused on 29.01.2017 in Pendlimarri PS, Cr.No.7/2017 and produced A1 Mude Mallikarjuna Naik @ Chandu before the Hon’ble 2nd Additional Judicial First Class Magistrate, Kadapa and sent for remand and he got bail granted by the Hon’ble VI Additional District Judge, Kadapa on 11.04.2017.

Whereas the activities of Mude Mallikarjuna Naik @ Chandu, s/o. Chakre Naik, Age: 26 years, Occ: Red Sanders Smuggling, Maddimadugu Sugali Bidiki, C.K. Dinne Mandal, Y.S.R. District are dangerous to forest wealth and prejudicial to the maintenance of public order apart from disturbing the peace, tranquility, social harmony / order and health of the society, it is very necessary to prevent him from further indulging in dangerous activities of looting national wealth.

Whereas in the circumstances explained above, it is found that Preventive Detention orders against Mude Mallikarjuna Naik @ Chandu, s/o. Chakre Naik, Age: 26 years, Occ: Red Sanders Smuggling, Maddimadugu Sugali Bidiki, C.K. Dinne Mandal, Y.S.R. District is very necessary for the following reasons:

1. It is evident that Mude Mallikarjuna Naik @ Chandu, s/o. Chakre Naik, Age: 26 years, Occ: Red Sanders Smuggling, Maddimadugu Sugali Bidiki, C.K. Dinne Mandal, Y.S.R. District, is a dreaded-notorious Red Sander wood thief and smuggler, he has involved in seven (07) different Red Sanders cases and arrested directly at the scene of offence in one (01) case i.e., Cr.No.7/2017 of Pendlimarri PS and he got bail in one (01) case i.e., Cr.No.7/2017 of Pendlimarri PS. He did not change his attitude and continued smuggling of pristine Red Sander wood and didn’t show any respect for Forest and Wildlife Laws / Acts, which is prejudicial to the maintenance of Public order.

2. Cases registered against him have not shown any deterrent effect on him so far. He continued to indulge in the similar activities, which are detrimental to public order and therefore his activities are required to be prevented by a detention order.

Because there is every possibility of the accused to continue his activities of Red Sander trees illegal felling and cutting into logs by dressing, theft and smuggling as Goonda which leads to theft and prejudice to the maintenance of Public Order, if he is released on bail.”

He further submitted that though respondent No.2 has not formally recorded his satisfaction that the detenu is likely to come out of the judicial custody and repeat the offences, the gist of the order suggests existence of such satisfaction.

In *N. MEERA RANI v. GOVERNMENT OF TAMIL NADU*¹, the Supreme Court held as under:

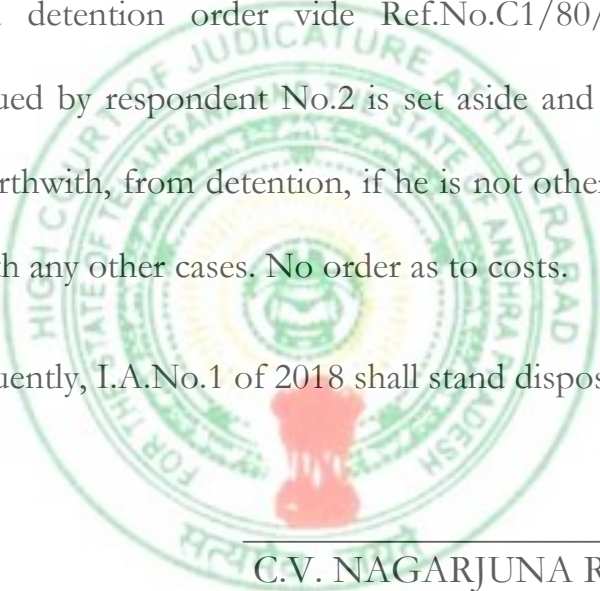
“Applying the above settled principle to the facts of the present case we have no doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with its annexure indicates the detaining authority’s awareness of the fact of detenu’s jail custody at 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.”

¹ (1989) 4 SCC 418

A perusal of the detention order and also the grounds of detention indicates that though respondent No.2 was aware of the fact that the detenu was sent to judicial remand, nowhere he has recorded his awareness that the detenu continued to be in judicial custody, even after granting bail and that there is a possibility of his coming out on bail and repeat the offences. Therefore, on both the counts, the impugned order of detention is not sustainable and the same is liable to be set aside.

For the aforementioned reasons, the writ petition is allowed and the impugned detention order vide Ref.No.C1/80/M/2017, dated 17.05.2017 issued by respondent No.2 is set aside and the detenu shall be released, forthwith, from detention, if he is not otherwise required in connection with any other cases. No order as to costs.

Consequently, I.A.No.1 of 2018 shall stand disposed of.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

20.02.2018.

Msr

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