

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.21594 of 2018

Date: 01.08.2018

Between:

K.Kalaivaani

..Petitioner

and

The State of Andhra Pradesh
Rep. by its Chief Secretary
General Administration (Law & Order) Dept.,
Secretariat Buildings, Hyderabad and 3 others

..Respondents

Counsel for the petitioner: Mr.S.Dushyanth Reddy

Counsel for the respondents: Mr.C.S.Surya Prakash Rao, Spl GP

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 directing the respondents to produce Kamesh, S/o.Santhanam, (for short 'the *detenu*') before this Court and set him at liberty after declaring Detention Order in Ref.C1/230/M/2018, dated 24.04.2018, of respondent No.2, as confirmed in G.O.Rt.No.1307, General Administration (SC.I) Department, dated 14-06-2018, issued by respondent No.1, as illegal and unconstitutional.

At the hearing, the only ground urged by Sri S.Dushyanth Reddy, learned Counsel for the petitioner, is that out of nine Criminal Cases referred to in the detention order, bail was granted only in one case and in seven cases, the *detenu* was not even produced before the jurisdictional Courts on P.T. Warrants. He has further submitted that as on the date of passing of the detention order, the *detenu* was in judicial custody though he was granted bail in one of the cases and though respondent No.2 has shown his awareness of the *detenu* being in judicial custody at the time of passing of the order, he has not recorded his satisfaction that the *detenu* is likely to be released on bail in remaining cases and that on such release, he is likely to repeat commission of similar offences prejudicial to the maintenance of public order.

Mr.C.S.Surya Prakash Rao, learned Special Government Pleader representing the State of Andhra Pradesh, is unable to show either from the detention order or from the grounds of detention that respondent No.2 has recorded his satisfaction of the likelihood of the *detenu* coming out on bail and repeating his activities.

In **N. Meera Rani v. Government of Tamil Nadu**¹, the Supreme Court held as under:

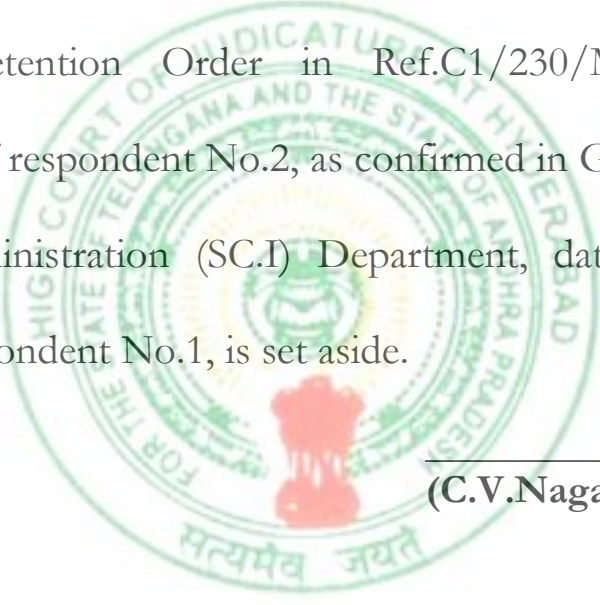
“Applying the above settled principle to the facts of the present case we have no doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with its annexure indicates the detaining authority’s awareness of the fact of detenu’s jail custody at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

¹ (1989) 4 SCC 418

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.”

In view of the failure on the part of respondent No.2 to record his satisfaction as referred to above, the impugned order of detention is unsustainable and the same is liable to be set aside.

For the aforementioned reasons, the Writ Petition is allowed and the Detention Order in Ref.C1/230/M/2018, dated 24.04.2018, of respondent No.2, as confirmed in G.O.Rt.No.1307, General Administration (SC.I) Department, dated 14-06-2018, issued by respondent No.1, is set aside.



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 1st August, 2018
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