

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL**

Writ Petition No.27498 of 2017

ORAL ORDER: (Per Suresh Kumar Kait, J)

Vide the present petition, petitioner has challenged detention order dated 17.05.2017 passed by the 2nd respondent and subsequent order passed by the 1st respondent vide G.O.Rt.No.1508, dated 11.07.2017, whereunder the detenue is detained in jail.

Learned counsel appearing on behalf of the petitioner submits that petitioner is arrayed as accused in the following cases.

S.No.	Cr.No. & date	Police Stn.	Offence/s
1.	117 of 2015, 23.09.2015	Chennur	Sections 379 IPC, 20(1)C(x), 29, 29(4) and 68 of A.P. Forest Act, 1967, Rule 3 of A.P.Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 3 of PDPP Act, 1984 and Section 51 of Wildlife Protection Act, 1972.
2.	254 of 2015, 08.11.2015	Duvvur	Sections 147, 148, 307, 353, 379 r/w 149 IPC, Section 29 of A.P.Forest Act, 1967, Rule 3 of A.P.Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Rule 3 of PDPP Act, 1984.
3.	28 of 2016, 26.02.2016	Railway Kodur	Sections 147, 148, 353, 307, 379 r/w 34 IPC, Section 20 (1)(c)(ii)(iii)(iv) and (vi), Section 29(4)(b) of A.P.Forest Act, 1967, Rule 3 of A.P. Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Section 3 of PDPP Act, 1984.
4.	107 of 2016, 11.07.2016	T.Sundupalli	Sections 147, 148, 379, 307, 353, 120-B, 109 r/w 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, Rule 3 of A.P.Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 3 of PDPP Act, 1984 and Section 51 of Wild Life Protection Act, 1972.
5.	169 of 2016, 06.11.2016	T.Sundupalli	Sections 147, 148, 379, 307, 353, 120-B, 109 r/w 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, Rule 3 of A.P.Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 3 of PDPP Act, 1984 and Section 51 of Wild Life Protection Act, 1972.
6.	5 of 2017	C.K.Dinne	Sections 147, 148, 379, 307, 353, 120-B, 109 r/w 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), Section 44(2) of A.P. Forest (Amendment) Act, 2016, Rule 3 of A.P.Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 3 of PDPP Act, 1984 and Section 51 of Wild Life Protection Act, 1972.

Learned counsel further submits that out of the aforesaid six cases, in Cr.No.5 of 2017, the detainee was arrested on 29.01.2017 and thereafter he was implicated in the rest of the five cases by recording his confessional statement and thereafter the detainee continued to be in jail. Despite that, vide order dated 17.05.2017, detention order was passed against the detainee without application of mind and without any material against him.

Learned counsel has drawn the attention of this Court to the grounds of detention, wherein it is stated that in spite of registration of crime and arrest, it is evident that the detainee came out from the prison on bail and is habitually committing the same offence and moreover, the laws under which he is being prosecuted are not deterring his activities or curbing his illegal activities. With a view to prevent him from causing damage to the National wealth, detention order is required because his activities are resulting in deforestation and causing ecological imbalance resulting in financial loss to the community and affecting the environment, for which no one is directly affected, but all the people are affected and suffer indirectly. Learned counsel submits that after the arrest of detainee on 29.01.2017, he never came out from the jail, thus, the detaining authority passed detention order based on the wrong facts.

Learned Government Pleader appearing on behalf of the respondents submits that the detaining authority, having come to satisfaction, has opined

that the cases registered against the detainee have not shown any deterrent effect on him so far and he continued to indulge in similar activities, which are detrimental to public order and therefore his activities are required to be prevented by a detention order. There is every likelihood of the detainee continuing his activities of illegal felling of red sanders trees, illegal cutting into logs by dressing it for theft and illegal transportation, which is detrimental to public order, if he is released on bail.

In view of the above, it seems, in the grounds of detention, it is mentioned that the detainee came out from the prison on bail and is habitually committing similar offences thereafter. Subsequently, it is stated that it will be prejudicial to the public order if he is released on bail. This contradiction establishes that the detaining authority, while passing the detention order, has not applied its mind. It is not in dispute that after his arrest in Cr.No.5 of 2017 on 29.01.2017, detainee never came out from prison on bail. Therefore, there was no occasion for the detainee to indulge in similar activities aforementioned when he was in jail since 29.01.2017.

Therefore, we have no hesitation in holding that the detaining authority has passed the detention order without application of mind and based on the incorrect facts.

Accordingly, the writ petition is allowed. The impugned detention order dated 17.05.2017 passed by the 2nd respondent and the further confirmation order issued in G.O.Rt.No.1508, dated 11.07.2017, are hereby quashed.

Consequently, the Superintendent, Central Prison, Y.S.R. District, Kadapa, is directed to release the detainee forthwith, if he is not required in any other criminal case.

As a sequel, miscellaneous petitions if any pending in the writ petition stand closed.

SURESH KUMAR KAIT, J

M.S.K. JAISWAL, J

January 03, 2018
MRR