

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

Writ Petition No.27617 of 2017

ORAL ORDER: (Per Suresh Kumar Kait, J)

Vide the present petition, petitioner has challenged detention order dated 02.08.2017 and subsequent orders passed by the respondents whereunder the detainee is detained in jail.

Learned counsel appearing on behalf of the petitioner submits that the 2nd respondent has passed the impugned detention order alleging that the detainee has been involved in the following crimes:

S.No.	Crime, date	P.S.	Offence
1.	53/2016, 02.09.2016	Kothakota	Section 20(b), 25 of NDPS Act
2.	48/2017, 19.03.2017	Nakkapalli	Section 20(b), 25 of NDPS Act
3.	178/2017, 27.03.2017	Palem	Section 20, 25(1)(a), 28 & 29 of Arms Act, 1959 r/w Section 120-B of IPC
4.	113/2017, 11.03.2017	Osmania University	Section 8(c) r/w 20(b)(II)(c) of NDPS Act
5.	153/2017, 01.04.2017	Osmania University	Section 8(C) r/w 20(b)(II)(B)(C) of NDPS Act

It is stated in the detention order that the acts of the detainee are prejudicial to the maintenance of public order, he has criminal history, he was warned several times by local police to safeguard public interest and in spite of the same he did not change his attitude.

Learned counsel appearing on behalf of the petitioner further submits that the sponsoring authority has failed to furnish necessary information before the 2nd respondent about the stage of bail application pending consideration after 20.07.2017 and result of the said bail application in Cr.No.48 of 2017. Had the sponsoring authority produced the relevant material such as the fate of the bail application as on the date of passing the

order of detention, the 2nd respondent would not have passed the said order. He further submits that the 2nd respondent failed to furnish legible copies of the documents such as mediators report etc. in Cr.No.48 of 2017 which are relied upon by him, to the detinue, due to which the detinue could not make effective representation.

In the counter-affidavit filed by the 2nd respondent, it is stated that, on the date of passing the order of detention, orders in bail petition were awaited and the said fact was stated in the grounds of detention and moreover the detinue or his family members did not bring to the notice regarding dismissal of bail petition filed by the detinue or produced the bail order. After passing the order of detention, the department received the order dated 31.07.2017 dismissing the second bail petition filed by the detinue vide CrI.P.No.5975 of 2017.

We have heard learned counsel for the parties.

We note that in the grounds of detention, it is specifically stated that the activities of the detinue are prejudicial to the maintenance of public order. Within a span of one year, he is involved in five cases. The detinue filed bail petition before this Court and orders were awaited.

It is not in dispute that respondents have relied upon five cases. In four cases, the detinue was directed to be released on bail, however, in the fifth case vide Cr.No.48 of 2017, as mentioned above, his bail petition was dismissed by this Court vide order dated 29.06.2017 and thereafter second bail petition was dismissed vide order dated 31.07.2017. Despite that, vide the detention order dated 02.08.2017, the detinue was detained.

We note, it is stated by the respondents in the counter-affidavit that neither the detinue nor his family members furnished copy of the order in the bail petition to the detaining authority. But, this cannot be accepted for the reason that the detaining authority has to procure all the documents required and only thereafter can arrive at the satisfaction while passing the

order of detention. In the present case, bail petition of the detenue was dismissed at first instance and when the second bail petition was pending, there was no hurry to pass the order of detention. The detaining authority ought to have waited till orders were passed by this Court. In addition to the above, vide order dated 31.07.2017, bail petition was dismissed and thereafter detention order was passed in haste on 02.08.2017 without considering said fact. Furthermore, the mediator's *panchanama* relied upon by the detaining authority, a copy of which is filed before this Court, is not legible, due to which the detenue could not make effective representation before the authority concerned. We find force in the arguments of counsel for the petitioner.

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

The writ petition is allowed. The impugned detention order dated 02.08.2017 passed by the 2nd respondent is hereby quashed.

Consequently, the Superintendent, Central Prison, Visakhapatnam District, is directed to release the detenue 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