

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

W.P.No.26340 of 2018

Between:

Mudda Geetha,

W/o Mudda Suresh Reddy

... Petitioner

And

The Collector & District

Magistrate, SPSR Nellore

District and another.

... Respondents

JUDGMENT PRONOUNCED ON 20.9.2018

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes/No

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

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

WRIT PETITION No.26340 of 2018

% 20.9.2018

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And:

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 Magistrate, SPSR Nellore
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.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. P.Nagendra Reddy

^ Counsel for the Respondents: Mr. C.S.Surya Prakash Rao

Spl. Govt. Pleader

? Cases Referred:

(1989) 4 SCC 418

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

W.P.No.26340 of 2018

Date:20.9.2018

Between.

Mudda Geetha,
W/o Mudda Suresh Reddy

...Petitioner

And.

The Collector & District
Magistrate, SPSR Nellore
District and another.

...Respondents

Counsel for the petitioner: Mr. P.Nagendra Reddy

Counsel for the respondents: Mr. C.S.Surya Prakash Rao
Spl. Govt. Pleader

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* directing the respondents to produce one Mudda Suresh Reddy, S/o Muniswamy Reddy (the detenu) before the Court and set him at liberty by setting aside detention order, vide No.C1(M)/19/2018, dated 26.5.2018, passed by respondent No.1 as confirmed by G.O.Rt.No.1207, General Administration (SC.I) Department, dated 04.6.2018, passed by respondent No.2.

At the hearing, Mr. P.Nagendra Reddy, learned counsel for the petitioner, raised two grounds to impeach the validity of the impugned detention order. First, the detenu was granted bail in 10 out of 20 cases; that he was not physically released and that therefore, the observation made by respondent No.1 in the impugned detention order, *viz.*, that the detenu did not change his attitude and continued prohibited smuggling of red sander wood after if he was granted bail, suffers from non-application of mind and second, that though at the time of passing of the impugned detention order, the detenu was under judicial remand in connection with as many as 10 cases, respondent No.1 has not recorded his satisfaction that there is a possibility for the detenu of obtaining bail in the remaining cases and repeating the activities which are prejudicial to the public order.

Mr.C.S.Surya Prakash Rao, learned Special Government Pleader (TS), submitted that the observation made by respondent No.1 in the impugned detention order referred to above contained in page-9 thereof has to be read along with the paragraph following the said observation and that, if they are read cumulatively what respondent No.1 meant to convey was that in spite of registration of many criminal cases, the detenu has not changed his attitude.

As regards the second submission advanced by the learned counsel for the petitioner, learned Special Government Pleader while fairly stating that respondent No.1 has not recorded his satisfaction that there is a possibility for the detenu to be released on bail in all the remaining ten cases and repeating the offences, he, however, submitted that no such ground is raised by the petitioner.

Apropos the first submission of the learned counsel for the petitioner, the relevant para of the impugned order reads as under:

“It is evident that Mudda Suresh Reddy, S/o Muniswamy Reddy, aged 34 years, Reddy (kapu) by caste, Occupation:Red Sanders Smuggling, Cheekirenipalli Village, Dakkili Mandal, SPSR Nellore District, is a dreaded-notorious red sander wood thief and smuggler. He has involved in twenty (20) different Red Sanders cases and arrested

directly at the scene of offence in one (1) case i.e., (1) Cr.No.72/2017 of Dakkili P.S. and arrested at other places in two (02) cases, i.e., (1) Cr.No.74/2017 of Kaluvoy P.S., (2) Cr.No.105/2017 of Kaluvoy P.S., and he was produced before the Hon'ble Courts through P.T. warrants in nine (9) cases, i.e., (1) Cr.No.01/2015 of D.V.Satram P.S. (2) Cr.No.62/2015 of Atmakur P.S., (3) Cr.No.95/2015 of Rapur P.S., (4) Cr.No.36/2016 of Rapur P.S., (5) Cr.No.59/2016 of Rapur P.S., (6) Cr.No.189/2016 of Sullurpet P.S., (7) Cr.No.45/2017 of A.Sagaram P.S., (8) Cr.No.68/2017 of S.R. Puram P.S., and (9) Cr.No.265/2017 of Venkatagiri P.S. and also he was granted bail by the Hon'ble Courts in eleven (11) cases. He did not change his attitude and continued smuggling of pristine red sander wood and did not show any respect for Forest and Wildlife Laws/Acts which is prejudicial to the maintenance of the public order."

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."

In the first reproduced para supra, respondent No.1 has stated that the detenu was involved in 20 cases pertaining to red sanders; that in 10 cases referred to therein he was granted bail and that, despite the same, the detenu did not change his

attitude and continued smuggling of red sander wood. However, in the immediately next para, respondent No.1 has stated that the cases registered against the detenu have not shown any deterrent change in him so far and that he continued to indulge in similar activities. Even if we read both the above paras together, what respondent No.1 has obviously meant is that both the registration of cases and grant of bail did not show any deterrent change in the detenu. Therefore, we cannot ignore the observation made in the preceding para. Though the detenu was granted bail in 10 cases, admittedly, he was not released physically and that, therefore, the question of the detenu not changing his attitude and continuing to smuggle the red sander wood did not arise. Hence, we find merit in the submission of the learned counsel for the petitioner that the said observation contained in the above-mentioned first para reflects total non-application of mind by respondent No.1. The preventive detention order being an exception to the fundamental right to liberty envisaged under Article-21 of the Constitution of India, the impugned detention order passed by the authority without proper application of mind cannot be sustained.

As regards the second submission of the learned counsel for the petitioner, no doubt, the petitioner did not specifically raise the ground that respondent No.1 has not recorded his

satisfaction about the likelihood of the detenu being released on bail. However, in our opinion, such a ground falling in the realm of pure question of law need not be specifically raised on behalf of the detenu. When a person's right to liberty is curtailed by not following the ordinary legal procedure, the State cannot be permitted to raise technical objections such as absence of relevant pleading. Even in the absence of the petitioner raising such a ground, the same is a verifiable one with reference to the contents of the impugned detention order. Therefore, no prejudice is caused to the State if such a ground, though not specifically raised, is considered by this Court.

In *N.Meera Rani Vs. Government of Tamilnadu and another*¹, the Supreme Court held that it is obligatory on the part of the detaining authority to record his satisfaction that a person who is in judicial custody based on the detention order is likely to be released on bail and repeat his activities which are prejudicial to the public order. It is appropriate to refer to the relevant para of the said judgment hereunder:

“We have already seen the logical process which must be followed by the authority in taking action under Section-3(1)(a) of the National Security Act, 1980. The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he

¹ (1989) 4 SCC 418

has been acting in a prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner? At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under Section-3(1)(a) and this basis is clearly absent in the case of the petitioner. Therefore, we see no escape from the conclusion that the detention of the petitioner in the circumstances of this case, is not justified by [Section-3\(1\)\(a\)](#) and is outside its purview."

As, admittedly, respondent No.1 has not recorded such satisfaction, the impugned detention order is not sustainable.

For the afore-mentioned reasons, the impugned detention order, vide No.C1(M)/19/2018, dated 26.5.2018, passed by respondent No.1, as confirmed by G.O.Rt.No.1207, General Administration (SC.I) Department, dated 04.6.2018, passed by respondent No.2 are set aside.

The Writ Petition is, accordingly, allowed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHAYM PRASAD

20th September, 2018

Note:

LR copies to be marked.

B/o

DR

