

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

&

HON' BLE SRI JUSTICE M.S.K. JAISWAL

W.P. No. 22330 of 2017

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed in the nature of writ of habeas corpus seeking direction to the respondents to produce the detenu i.e. Yelala Prem Kumar before this Court and set him at liberty by quashing the detention proceedings in Proc.No.C1/ 1102/ 2017, dated 03.06.2017 issued by the 2nd respondent – Collector and District Magistrate, Sangareddy District.

This Court, on 27.12.2017, made the following order:

“Vide the present petition, the petitioner has challenged the order dated 03.06.2017, whereunder the detenu was arrested on 07.06.2017, and since then, he is under detention.

The writ petition is filed on various grounds amongst ground No.6, whereby, it is stated that in Crime no. 176 of 2016, it was alleged that 2 Kgs. of ganja was seized from Accused No.1, but not from Accused No.2 i.e. detenu herein. There is nothing further to connect the detenu with the said ganja, except vaguely mentioning that all the accused were responsible. In fact and law, it would not attract Section 20(b) of the NDPS Act, so far as the detenu is concerned. It appears that no preventive detention case was filed in respect of the said persons, but the respondent/ Police chose the detenu for the reasons best known to them.

Counsel for the petitioner has drawn the attention of this Court to the charge sheet filed in FIR.No. 176 of 2016 for the offences under Section 20(b) of NDPS Act and Section 9(1) of A.P. Gaming Act, wherein, it is stated that as per their pre-plan, on 27.10.2016 morning hours, the accused therein went to Bidar and

procured 2 Kgs. of dry ganja nearby Bidar tandas and brought to Koheer village to sell the same for high price. While they were in an open place near a tamarind tree on Railway Station road in Koheer village and were organizing matka, on reliable information, police caught them red-handedly and seized 2 Kgs. of dry ganja, net cash of Rs.4,500/- and two Matka Chits from A1; net cash of Rs.4,000/- and one Matka Chit was seized from A2; net cash of Rs.4,300/- and 2 Matka Chits were seized from A3, net cash of Rs.4,800/- and two Matka Chits were seized from A4. Thus, in total, the police seized 2 Kgs. of dry Ganja, net cash of Rs.17,600/- and 7 Matka Chits. Police pasted panch chits on two samples of seized ganja, each weighing about 25 grams and marked as S1 and S2 to send the same to FSL, Hyderabad for examination and report. Later, the Police took the accused persons along with the seized property i.e. 2 Kgs. of dry ganja, net cash of Rs.17,600/- and 7 Matka chits, to Koheer Police Station and registered a *suo motu* case in Cr.No. 176 of 2016 under Section 20(b) of NDPS Act and Section 9(1) of the A.P. Gaming Act and took up the investigation.

Learned counsel for the petitioner submits that as per the charge sheet, 2 Kgs. of ganja, net cash of Rs.4,500/- and 2 Matka chits were seized from A1 and net cash of Rs.4,000/- and 1 Matka chit was seized from A2. However, in the grounds of detention, it is mentioned that in Crime No. 176 of 2016, the Police seized ganja of 2 Kgs., 7 Matka chits and net cash of Rs.17,600/-. There are 4 accused in the case mentioned above and different recoveries were made effective, however, the detention order is passed only against A2 i.e. the detenu in the present case, though, as per the charge sheet, only an amount of Rs.4,000/- and 1 Matka chit was seized from him. For the reasons best known to the respondents, no detention orders are passed against the other accused, however, they chose only A2 for the aforesaid purpose. He submits, the material placed before the detaining authority is contrary to the record, due to which, the detaining authority got influenced and passed the detention order upon the detenu.

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

conclusion on the ground that the detenu/ A2 is a member of the gang and his activities are prejudicial to the public order. If detention order is not passed, he would have continued to involve in similar activities.”

On the last occasion, the learned Government Pleader sought time to verify whether the detention order has been passed against other co-accused in Cr.No. 176 of 2016. Accordingly, the learned Government Pleader for Home, on instructions, submits that there is no detention order passed against any of the other accused except the detenu herein (A2).

He has fairly conceded that the as per the charge sheet, two kgs. of ganja, net cash of Rs.4,500/- and 2 Matka chits were seized from A1, whereas ganja was not recovered from A2 except net cash of Rs.4,000/- and 1 Matka chit. If that is the position, then the detaining authority has not applied his mind while passing the order without verifying the correct facts. Therefore, the activities of the detenu cannot be considered as prejudicial to the public order. Thus, we are inclined to quash the detention proceedings dated 03.06.2017 issued by the 2nd respondent.

Hence, the detention proceedings in Proc.No.C1/ 1102/ 2017, dated 03.06.2017 issued by the 2nd respondent – Collector and District Magistrate, Sangareddy District ordering detention of the detenu i.e. Yalala Prem

Kumar, are hereby set aside. The Superintendent, Central Prison, Cherlapalli, Medchal District is hereby directed to release the detenu i.e. Yalala Prem Kumar forthwith if he is not required in any other case.

Accordingly, the writ petition is allowed. No order as to costs.

SURESH KUMAR KAIT, J

03.01.2018

M.S.K. JAISWAL, J

bcj

