

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 21035 OF 2017

DATED 24TH JANUARY, 2018

Between:

Madakala Venkata Kumari ... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
General Administration (L&O) Department,
Secretariat Buildings at Velagapudi,
Amaravathi, Guntur District, and others ... Respondents

Counsel for the petitioner : Sri Parise Narasimhulu

Counsel for the respondents : Special Government Pleader (AP)

THIS COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Detention of one Madakala Babu @ Madaka Babu (hereinafter referred to as 'the detenu') under proceedings in Ref.No. C1/62/M/2017 dated 04-04-2017 of respondent No. 2 as confirmed in G.O.Rt.No. 1069 General Administration (Law & Order) Department dated 12-05-2017 by respondent No. 1 is questioned by the wife of the detenu in this Writ Petition.

2. We have heard learned counsel for both parties and perused the record.

3. The detenu is the accused in nine criminal cases, all of which were registered for forest offences. The detenu is alleged to have indulged in red sanders smuggling. A perusal of the impugned detention order shows that the detenu was arrested in connection with crime No. 316 of 2016 of Mydukur U/G Police Station and produced before the Judicial I Class Magistrate, Mydukur. After his remand, the detenu was granted bail on 28-02-2017. It is further an admitted fact that in connection with all eight other cases, the detenu has not even applied for bail and therefore he continued to be in judicial remand in connection with all these cases. However, in the detention order, it is stated that in spite of

registration of the crimes and his arrest, the detenu came out from the prison on bail and he is habitually committing similar offences. This finding is in the teeth of the admitted fact that after his arrest on 13-11-2016, the detenu has not come out of the prison. Therefore, the question of his repeating the alleged illegal activities did not arise. The preventive detention, being an exception to Article 21 of the Constitution of India, cannot be resorted to unless the detaining authority is satisfied based on the material on record that the activities of the offender are likely to disturb public order if he is not detained. The law is well settled that if the offender is already in prison, the detaining authority must record his satisfaction that there is a likelihood of his coming out of prison and repeating his activities which cause disturbance to public order and are prejudicial to public interest (see *Rekha Vs. State of Tamil Nadu through Secretary to Government and another*¹, *Union of India Vs. Paul Manickam*², *K.Anju Vs. State of*

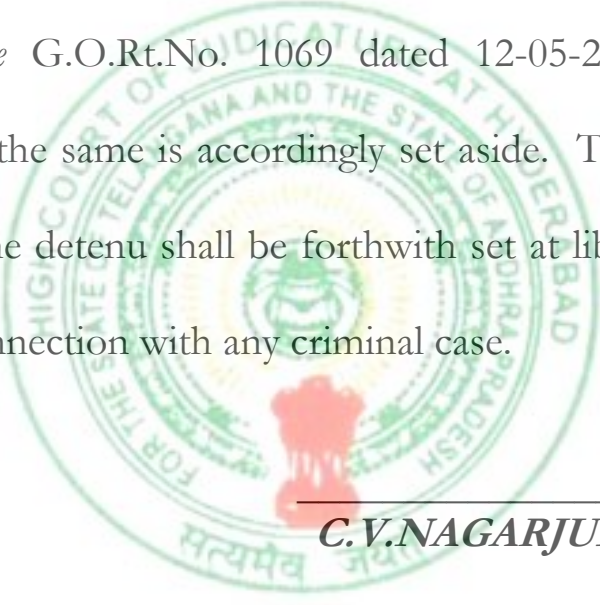
¹ (2011) 5 SCC 244

² (2003) 8 SCC 342

*Telangana and another*³ and *M.Ram Vs. State of Telangana and others*⁴).

4. The aforementioned observation of respondent No. 2 that the detenu has come out of the prison on bail being contrary to the fact on record, the impugned order of detention suffers from total non-application of mind.

5. In this view of the matter, the impugned detention order, as confirmed *vide* G.O.Rt.No. 1069 dated 12-05-2017, cannot be sustained and the same is accordingly set aside. The Writ Petition is allowed. The detenu shall be forthwith set at liberty if he is not required in connection with any criminal case.



C.V.NAGARJUNA REDDY, J.

GUDISEVA SHYAM PRASAD, J.

Date: 24-01-2018
JSK

³ 2016 (3) ALT (Criminal) 413 (DB) (A.P.)

⁴ 2017 (1) ALD (Criminal) 89