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

WRIT PETITION No.28254 of 2018

Date: 04.10.2018

Between :

Shabaz Khan

… Petitioner

And

The State of Telangana,
rep. by its Principal Secretary (Poll),
General Administration
(Special Law & Order) Department,
Secretariat Buildings,
Hyderabad and another.

… Respondents

COUNSEL FOR PETITIONER : Sri P. Prabhakar Reddy

COUNSEL FOR RESPONDENTS : G.P. for Home (T.S.)

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 the detenu – Sri Raheem Khan in the Court and set him at liberty after setting aside the detention order vide Proc. C.No.33/PDC/KNR/2018, dated 28.04.2018 passed by respondent No.2.

We have heard Sri P. Prabhakar Reddy, learned counsel for the petitioner, and the learned Government Pleader for Home (Telangana State).

The learned counsel for the petitioner submitted that in the impugned order of detention, respondent No.2 has referred to the fact of the detenu moving bail applications in three criminal cases on 20.04.2018 and observed that all those bail applications were pending, but all the bail applications were dismissed on 27.04.2018 and that, therefore, the impugned detention order suffers from non-application of mind.

The learned Government Pleader for Home (T.S.) has fairly conceded that a day before the impugned detention order was passed, the bail applications were dismissed. He, however,

stated that, evidently due to the communication gap between the sponsoring authority and the detaining authority, respondent No.2 did not come to know about the dismissal of the bail applications.

The law is well settled that the subjective satisfaction about the likelihood of the detenu being released on bail and his repeating the activities, which are prejudicial to the public order, is a *sine qua non* and that such subjective satisfaction must be based on true and correct facts {see N. MEERA RANI v. GOVERNMENT OF TAMIL NADU – (1989) 4 SCC 418}.

In the instant case, all the three bail applications were dismissed on 27.04.2018 itself. Had respondent No.2 known about the dismissal of the bail applications, he may not have probably formed the subjective satisfaction that the detenu is likely to come out on bail and passed the detention order. Thus, the opinion formed by respondent No.2 is not based on the correct and proper facts, and accordingly, the impugned order dated 28.04.2018 suffers from non-application of mind.

Hence, the impugned order vide Proc. C.No.33/PDC/KNR/2018, dated 28.04.2018 passed by

respondent No.2 is not sustainable and the same is accordingly quashed. The detenu – Sri Raheem Khan shall be released from the detention, if he is not otherwise required in any other case or crime.

The writ petition is accordingly allowed. No order as to costs.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

04.10.2018.
Msr

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