

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

W.P.No.32398 of 2018

Date: 09.11.2018

Between:

Md.Naseem

....Petitioner

And:

The State of Telangana,
Rep. by its Principal Secretary (Poll),
Secretariat, Hyderabad and 2 others.

....Respondents

Counsel for the petitioner: Mr.MSP.Kamaraju

Counsel for the respondents: GP for Home (TS)

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 release the petitioner's son *viz.*, Mohd.Kifayath Ali (for short 'the *detenu*') from detention after quashing the detention order passed by respondent No.2 *vide* Ref.22/PD-Act/CCRB/RCKD/2018, dated 19-06-2018, as confirmed by respondent No.1 *vide* G.O.Rt.No.1614, dated 16-08-2018.

Though several contentions have been raised by Mr.M.S.P.Kamaraju, learned Counsel for the petitioner, in the view we are proposing to take, it is not necessary to refer to all of them. It will suffice to consider the contention that though the *detenu* was released on bail in connection with Crime No.109 of 2018 of Matwada Police Station on 28-05-2018, subject to certain conditions, respondent No.2 has failed to consider the said conditions.

The learned Government Pleader for Home (TS) has not disputed that the aforementioned bail order is subject to certain conditions.

Admittedly, respondent No.2 has not referred to the bail condition incorporated in the bail order passed in Crime No.109 of 2018 though he has narrated the previous incident of the *detenu* violating the bail conditions. In **M.Ahamedkutty v. Union of India**¹ and **Union of India v. Paul Manickam**², the Supreme Court held that if the detaining authority is not in awareness of the relevant conditions in the bail orders,

¹ (1990) 2 SCC 1

² (2003) 8 SCC 342

the detention order is liable to be quashed on the ground of non-application of mind and improper satisfaction. This is for the reason that if the conditions of bail are effective enough to prevent the *detenu* from indulging in offences in future, there would be no need for the detaining authority to invoke the provisions of the Preventive Detention Act, 1950, which is an exception to Articles 19 and 21 of the Constitution of India.

Mere fact that respondent No.2 has referred to the *detenu* violating the bail conditions in connection with the earlier crimes, would not cure the defect, which the impugned detention order suffers from. In the light of the law laid down by the Supreme Court in the judgments referred to supra, the impugned detention order is not sustainable.

In the result, the Writ Petition is allowed. Impugned Detention Order, *vide* Ref.22/PD-Act/CCRB/RCKD/2018, dated 19-06-2018, of respondent No.2 as confirmed by respondent No.1 *vide* G.O.Rt.No.1614, dated 16-08-2018, is set aside. The *detenu viz.*, Mohd.Kifayath Ali is directed to be released from the detention forthwith, if he is not required in connection with any other case(s).

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 9th November, 2018
lur