

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Writ Petition No.37202 of 2018

Between:

B.Nagarjuna

... Petitioner

and

**The State of A.P.,
Rep. by its Prl.Secretary to Govt.,
Home dept., (Paroles and HRC) Dept.,
Velagapudi, Amaravathi and 4 others**

...Respondents

Date of Judgment Pronounced: 01-11-2018

Submitted for Approval:

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

and

The Hon'ble Sri Justice P.Keshava Rao

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

(C.V.Nagarjuna Reddy, J)

(P.Keshava Rao, J)

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

The Hon'ble Sri Justice P.Keshava Rao

+ Writ Petition No.37202 of 2018

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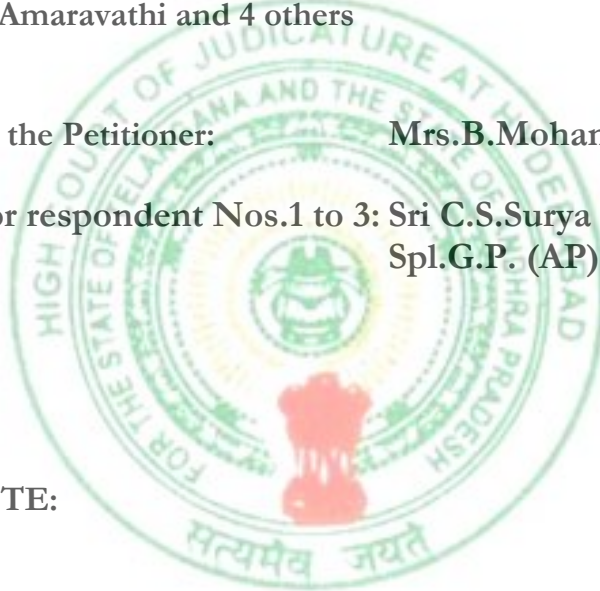
! Counsel for the Petitioner: Mrs.B.Mohana Reddy

**^ Counsel for respondent Nos.1 to 3: Sri C.S.Surya Prakasa Rao,
Spl.G.P. (AP)**

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>HEAD NOTE:

? Cases cited:



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

and

The Hon'ble Sri Justice P.Keshava Rao

Writ Petition No.37202 of 2018

Dated 1st November, 2018

Between:

B.Nagarjuna

...Petitioner

and

**1.The State of Andhra Pradesh
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Home Dept., (Paroles and HRC) Dept.,
Velagapudi, Amaravathi and 4 others.**

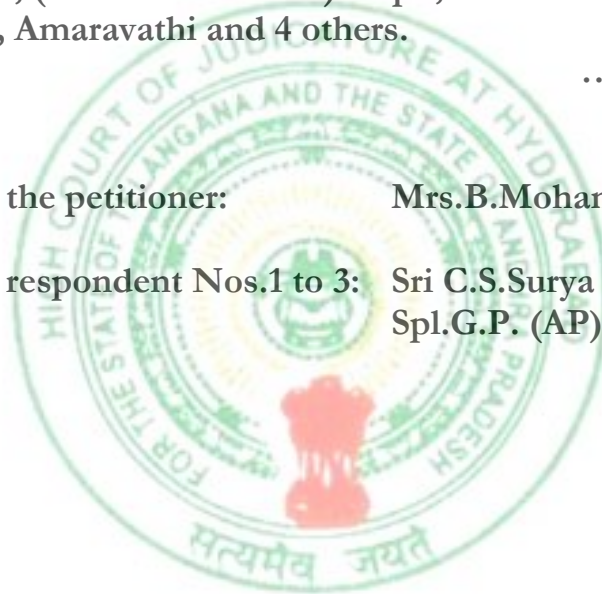
... Respondents

Counsel for the petitioner:

Mrs.B.Mohana Reddy

Counsel for respondent Nos.1 to 3:

**Sri C.S.Surya Prakasa Rao,
Spl.G.P. (AP)**



This Court passed 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 K.Eswar Rao @ Esvaraiah (for short 'the alleged *detenu*'), before the Court and set him at liberty by declaring the action of the respondents in not giving remission to him in terms of G.O.Ms.No.8, dated 23-01-2018, on par with the similarly situated convict prisoners as illegal and violative of Article 14 of the Constitution of India.

The brief facts leading to the filing of this Writ Petition are that by Judgment, dated 31-03-2009, in SC.No.106 of 2008, on the file of the VI Additional Sessions Judge (FTC), Prakasam at Markapur, the alleged *detenu* was convicted *inter alia* for the offence punishable under Section 302 IPC and sentenced to undergo Imprisonment for Life. Criminal Appeal No.749 of 2009 filed by him against the said Judgment was dismissed by a Division Bench of this Court *vide* Judgment, dated 04-12-2013.

In the affidavit, filed in support of the Writ Petition, the petitioner, who is the nephew of the alleged *detenu*, averred that the latter has undergone more than seven years of actual sentence including the remand period and more than ten years of total sentence including remission as on 26-01-2018 and that the State of Andhra Pradesh granted special remission to the life

convicts on the occasion of Republic Day during the year 2018 by issuing G.O.Ms.No.80, dated 26-01-2018. The petitioner further averred that the alleged *detenu* is entitled to the special remission as per the said GO; that the benefit of the said GO was extended to four similarly placed convict prisoners *viz.*, Sri Kollayappa, Sri Prakasam and two others; that they were released on 26-01-2018; that the alleged *detenu's* name was not forwarded by respondent No.4 to the Government for grant of special remission; and that till date, he is lodged in jail, which is illegal.

In pursuance of the notice issued by this Court, the Jailor of Central Prison, Kadapa, filed a counter-affidavit wherein, while admitting the facts pleaded by the petitioner referred to above, he has, however, stated that while undergoing sentence the alleged *detenu* escaped from the open jail on 31-01-2014; that Crime No.16 of 2014 was registered against him for the offence punishable under Section 324 IPC on 31-01-2014 on the file of Bukkarayasamudram Police Station, Ananthapuramu; that he was produced before the Additional Judicial First Class Magistrate on 27-02-2014; that pursuant to the remand order passed by the Magistrate, the alleged *detenu* was lodged at District Jail, Ananthapuramu on 03-03-2014; and that subsequently, he was transferred to the Central Prison, Kadapa. It is further averred in the counter-affidavit that as the alleged *detenu* escaped

from legal custody, the total remission earned by him up to the date of escape *i.e.*, 31-01-2014 stood cancelled as per Rule 338(2) of the Andhra Pradesh Prison Rules, 1979 (for short 'the Rules'); and that while the proposals submitted to the Director General of Prisons and Correctional Services, Andhra Pradesh, for passing appropriate orders were pending, Crime No.16 of 2014 ended in acquittal on 20-05-2015. The deponent of the counter-affidavit further averred that as the alleged *detenu* had escaped from jail, the total remission earned by him stood cancelled and that therefore, he is not entitled to the benefit of G.O.Ms.No.8, dated 23-01-2018.

In the reply-affidavit filed by the petitioner, he has averred that even the four life convicts, referred to in his affidavit filed in support of the Writ Petition, also escaped from the Jail and recaptured by the Police concerned, but they were given the benefit of G.O.Ms.No.8, dated 22-01-2018.

The learned Special Government Pleader representing the learned Advocate-General for the State of Andhra Pradesh submitted (1) that the Writ Petition filed for Habeas Corpus is not maintainable as the appropriate remedy for the petitioner is to seek a writ of Mandamus based on the alleged discrimination; (2) that with the escape from the jail, the total remission earned

by the alleged *detenu* stood forfeited and that therefore, the special remission envisaged in G.O.Ms.No.8, dated 23-1-2018, is not available to him; and (3) that the case of Kollayappa and three other convict prisoners referred to by the petitioner stands on a different footing from that of the alleged *detenu* as they have escaped while on parole.

With respect to the first submission of the learned Special Government Pleader referred to above, we find no merit therein. A Writ of Habeas Corpus would lie where the detention of a person is illegal. If the alleged *detenu* is entitled to benefit of G.O.Ms.No.8, his continued detention beyond 26-01-2018 constitutes illegal detention. Therefore, the petitioner is entitled to maintain the Writ Petition for the relief of issue of Habeas Corpus.

As regards the second submission of the learned Government Pleader, irrespective of the interpretation that could be placed on Rule 338 of the Rules, on the respondents' own showing, Crime No.16 of 2014 registered against the alleged *detenu* for escaping from jail ended in acquittal on 20-05-2015. Once the alleged *detenu* is acquitted, it is not permissible for the Police to treat him as the prisoner, who escaped from the jail, and admittedly, no order was passed forfeiting his remission till

date. Therefore, this submission of the learned Special Government Pleader is rejected.

With regard to the third submission, we do not find any distinction between the alleged *detenu* escaping from jail and the four other convict prisoners escaping while on parole. As the result in both the cases is same, such an artificial distinction cannot be made just to deprive the alleged *detenu* of the benefit of remission under the extant GO. At any rate, the acquittal of the alleged *detenu* in Crime No.16 of 2014 is not questioned by the State by filing Appeal. Thus, the respondents are not entitled to raise this issue at all.

For the aforementioned reasons, the Writ Petition is allowed. The respondents are directed to release the alleged *detenu viz., K.Eswar Rao @ Eswaraiah, S/o.Shankaraiah,* forthwith in terms of G.O.Ms.No.8, dated 23-10-2018, if he is not required in any other crime.

(C.V.Nagarjuna Reddy, J)

(P.Keshava Rao, J)

Dt: 1st November, 2018

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