

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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.39969 of 2018

Date: 15.11.2018

Between:

Nitin Trilokchand Shah,
S/o.Trilokchand,
Aged: 49 years, Occ: Business,
R/o.302/303, Darshan Heights,
B.M. Marg, Lower Parel,
Mumbai – 400013.
Maharashtra State.

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Petitioner

And

The State of Telangana,
rep. by its Principal Secretary,
Department of Home,
Secretariat, Hyderabad,
Telangana State
and four others.

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Respondents

Counsel for the Petitioner : Mr. Challa Ajay Kumar

Counsel for the Respondents: G.P. attached to Addl. A.G.(TS)

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of habeas corpus, declaring the action of the respondents in not releasing the brother of the petitioner by name Kumar Pal Trilokchand Shah (for short 'the detenu'), as illegal. A consequential direction has been sought, to set the detenu at liberty.

2. The detenu is accused in four criminal cases. It is not in dispute that he was granted bails in all the four cases. The grievance of the petitioner is that in spite of grant of bails, the detenu is not released. On a direction of this Court, respondent No.5 filed a counter affidavit. During the hearing, it has emerged that while there is no controversy regarding the bails in two criminal cases, the bone of contention pertains to Crime Nos.512 of 2015 and 767 of 2016. In Crime No.512 of 2015 relatable to Sessions Case No.775 of 2017, bail was granted on 30.06.2017 and in Crime No.767 of 2016, bail was granted on 20.04.2017 by the Judge, Family Court, Sangareddy with certain conditions, which include that the detenu shall not leave BHEL Ramachandrapuram township without the specific permission of the court. Evidently, on the ground that the detenu has not appeared/was not produced before the court, a non- bailable warrant was issued by the jurisdictional court, in connection with Sessions Case No.773 of 2017 on 14.02.2018. However, on the application filed on behalf of the detenu, the said warrant was recalled on

10.08.2018 by the court of VIII Additional Sessions Judge, Ranga Reddy at L.B. Nagar. As regards Crime No.767 of 2016, on the same ground, namely, that the detenu did not appear/was not produced, non-bailable warrant was issued on 11.08.2017. Later, the detenu was produced on P.T. warrant on 07.09.2017, on which date the XIX Metropolitan Magistrate, Kukatpally, has sent the detenu to judicial custody.

3. In the counter affidavit, respondent No.5 sought to justify non-release of the detenu on bail, in both the above mentioned cases on the ground that the jurisdictional courts have not granted bail orders following issue of non-bailable warrants in both the cases. What this court fails to understand is that, when the detenu was admittedly in jail from 16.01.2017 and he was not released in pursuance of the bail orders, how non-bailable warrants could be issued to him, on the ground that he did not appear, as it was a duty and responsibility of the police to produce him before the jurisdictional courts on the dates of hearing of the respective cases. The Presiding Officers of both the courts in our opinion, failed to apply their mind to this fundamental aspect and mechanically issued non-bailable warrants.

4. The learned Government Pleader submitted that as no formal orders granting bail were passed by XIX Metropolitan Magistrate, Kukatpally, in connection with Crime No.512 of 2015 (S.C.No.773 of 2017), presently made over to VIII Additional Sessions Judge,

Rangareddy and by the Principal Sessions Judge, Sangareddy, in Crime No.767 of 2016, co-related to Sessions Case No.1 of 2018, the detenu could not be released. We are of the considered opinion that being in judicial custody, in spite of bails being granted in both the above cases, the detenu cannot be held responsible for non-appearance before the courts and issue of non-bailable warrants as a consequence of his non-appearance.

5. Therefore, even if formal orders for the release of the detenu in pursuance of the bail orders still in force, have not been passed by the jurisdictional courts, the detenu cannot be detained any longer.

6. In the above facts and circumstances of the case, respondent No.5 is directed to forthwith release the detenu, in pursuance of the bail orders referred to above, subject to his complying with the conditions if any, of bail orders and if he is not otherwise required in any other case or crime in which he was not granted bails.

7. The writ petition is, accordingly, allowed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 15th November, 2018

msb

