

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.39190 of 2017

Date: 13.03.2018

Between:

Smt.Mohsina Taj

... Petitioner

and

The State of Telangana
Rep. by its Chief Secretary,
Secretariat Buildings,
Velagapudi
Amaravathi, AP. and 3 others

...Respondents

Counsel for the Petitioner:

**Sri MSP.Kamaraju
for Mr.MAK.Mukheed**

**Counsel for the respondents:
Rao,**

**Sri CS.Suryaprakasha
Spl.GP**

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 to set aside detention order, dated 05-10-2017, passed by respondent No.2 and approved by respondent No.1 in G.O.Rt.No.2270, General Administration (Law & Order) Department, dated 12.10.2017.

We have heard Mr.MSP.Kamaraju, learned Counsel representing Mr.MAK.Mukheed, learned Counsel for the petitioner, and Mr.C.S.Suryaprakasha Rao, learned Special Government Pleader attached to the learned Advocate-General.

The husband of the petitioner (hereinafter referred to as 'the *detenu*') was detained by order, dated 05-10-2017, passed by respondent No.2 as he was allegedly involved in the activities of Red Sanders felling and smuggling. In the grounds of detention, respondent No.2 has relied upon the following Crimes:

“Crime No.62 of 2015 of Gudipala Police Station
Crime No.25 of 2016 of S.R.Puram Police Station

Crime No.46 of 2016 of Rompicherla Police Station

Crime No.1 of 2017 of K.Nagar Police Station

Crime No.44 of 2017 of Chittoor Taluk Police Station.”

Respondent No.2 stated in his order that the *detenu* was granted bail in Crime No.44 of 2017 in Chittoor District and that his activities disturb the public order and they could not be controlled just by invoking the normal legal procedure.

The learned Counsel for the *detenu* submitted that out of the five cases referred to above, the *detenu* was granted bail only in Crime No.44 of 2017 and that he continued to be under judicial custody as he was not granted bail in the remaining four cases. He has further submitted that respondent No.2 has not placed on record his satisfaction that there is a likelihood of the *detenu* obtaining bail in other cases also and repeating his activities after coming out on bail. He placed reliance on the judgment of this Court in **Syed Mohiyuddin vs.**

State of Andhra Pradesh¹, wherein this Court has quashed the detention order for the failure of the detaining authority to record such satisfaction.

A perusal of the order in **Syed Mohiyuddin** (1 supra) shows that this Court has placed reliance on **N.Meera Rani vs. Government of Tamil Nadu**² and extracted the following part of the judgment in the said case:

“Applying the above settled principle to the facts of the present case we have no doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with its annexure indicates the detaining authority’s awareness of the fact of detenu’s jail custody at the time of the making of the detention order. However, there is no indication therein that the detaining authority considered it likely that the detenu could be released on bail. In fact, the contents of the order, particularly, the above quoted para 18 show the satisfaction of the detaining authority that there was ample material to prove the detenu’s complicity in the bank dacoity including sharing of the booty in spite of absence of his name in the FIR as one of the dacoits. On these facts, the order of detention passed in the present case on

¹ WP.No.25746 of 2017, dated 31-01-2018

² (1989) 4 SCC 418

September 7, 1988 and its confirmation by the State Government on October 25, 1988 is clearly invalid since the same was made when the detenu was already in jail custody for the offence of bank dacoity with no prospect of his release. It does not satisfy the test indicated by the Constitution Bench in *Rameshwar Shaw v. District Magistrate, Burdwan* (AIR 1964 SC 334). We hold the detention order to be invalid for this reason alone and express no opinion on merits about the grounds of detention.”

Admittedly, the *detenu* was granted bail only in one out of five cases and he continued to be in judicial custody. Respondent No.2 has neither shown the awareness of continued detention of the *detenu* nor recorded his satisfaction that the *detenu* is likely to obtain bail; come out of detention and repeat his activities, which are prejudicial to the public.

Following the ratio in the aforementioned judgments, the impugned detention order, dated 05.10.2017, as confirmed by respondent No.1 *vide* G.O.Rt.No.2270, General Administration (Law & Order) Department, dated 12-10-2017, are liable to be quashed and they are, accordingly, quashed.

The Writ Petition is, accordingly, allowed.

As a sequel, Miscellaneous Petitions, pending if any,
stand disposed of.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 13th March, 2018
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