

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No. 43533 of 2017

ORDER: (Per Hon' ble Sri Justice C.Praveen Kumar)

1) The present writ petition came to be filed under Article 226 of the Constitution of India, seeking issuance of writ of habeas corpus declaring proceedings vide Ref:C1/ 575/ M/ 2017, dated 29.10.2017 of respondent No.2, as confirmed by respondent No.1 vide G.O.Rt.No.2673, dated 30.11.2017, as illegal and unconstitutional.

2) The said detention order came to be passed on the ground that the detenu is a Goonda, within the meaning of word "Goonda" as defined under Section 2 (g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act") and with a view to prevent him in acting in any manner prejudicial to the maintenance of the public order.

3) The grounds of detention refer to eight crimes registered in different police stations, for the offences punishable under the Provisions of the Andhra Pradesh Forest Act, Rule 3 of the Andhra Pradesh Sandalwood and Red Sanders Wood Transit Rules, 1969 coupled with Section 51 of the Wild Life Protection Act. The

crimes also referred to offences punishable under Sections 379, 307 and 353 of the Indian Penal Code.

4) Though various grounds are urged in the affidavit filed in support of the writ petition, but the main ground urged by the learned counsel for the petitioner is that as on the date of passing of the detention order, the detenu was in judicial custody and that the detaining authority has not recorded his satisfaction of the likelihood of detenu being released on bail, which warranted him to pass the detention order. The counsel took us through various cases in support of his plea and further stated that in a Batch of cases, this Hon'ble Court has released the detenu on identical circumstances. One such order passed by the Division Bench of this Court in W.P.No.25736 of 2017 is placed before us.

5) On the other hand, the learned Advocate-General also placed on record the judgments of the Apex Court on this aspect. But however admits that the order of the Division Bench in W.P.No.25736 of 2017 seeking release of the detenu therein, who stand on identical footing as that of the detenu herein, was not challenged and has become final.

6) The short question that falls for consideration is whether the detaining authority recorded his satisfaction as to the existence of any reasonable possibility of the detenu being released on bail since the detenu was in jail as on the date of passing of the order.

7) A reading of the order passed by the detaining authority and also the grounds of detention does not anywhere indicate that the

detaining authority expressed the possibility of detenu being released on bail. The fact that the detenu was in jail as on the date of passing of the detention order is not in dispute. It is also not in dispute that he was not released on bail nor a P.T. warrant was obtained in other cases where he was shown as an accused. The order and the grounds of detention only show that the cases registered against him have not shown any deterrent effect on him so far and the detenu indulged in similar activities, which are detrimental to public order and therefore his activities are required to be prevented by a detention order. The order also shows that the detenu was arrested in Crime No.61 of 2017 of B.Kodur Police Station, produced on P.T.Warrant in Crime No.52 of 2017 and got bail in Crime No.61 of 2017 of B.Koduru Police Station. It is further stated in the order that he is evading his arrest, continuing in redsander smuggling activities and also does not have any respect for forest and wild life laws. The last portion of the order reads as under:

“Therefore, I, T.Baburao Naidu, I.A.S., Collector and District Magistrate, Y.S.R. District in exercise of the powers conferred upon me under Sub Section 2 of Section 3 of the Act, vide G.O.Rt.No.2051, General Administration (Law and Order) Department, dated 14.09.2017, do hereby direct under Sub-Section (1) of Section 3 of the said Act that Boddukuri Adi Krishna, S/o. Venkata Narasaiah, Age: 34 years, Occ: Red Sanders Smuggling, Uppalapadu Village, Ananthasagaram Mandal, Nellore District, now at D.No.25-2-1723, NGO Colony, Nellore Town and District, shall be detained in Central Prison, Kadapa, Y.S.R.District, Andhra Pradesh

State as per G.O.Ms.No.18, General Administration (Law and Order) Department, dated 02.03.2015 until further orders to be received from the Government in order to prevent the detenu from indulging in such dangerous, clandestine and illegal activities prejudicial to the maintenance of public order and as per the provisions laid down under the A.P. Prevention of Dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.”

8) From the above, it appears that the detaining authority was under the impression that the detenu was not in prison as on the date of passing of the detention order, which in fact is not correct even from the counter filed by the Government.

9) In *K.Nandini v. State of Andhra Pradesh*¹ this Court while dealing with an identical issue quashed the detention order relying upon the judgment of the Apex Court in *N.Meera Rani v. Government of Tamil Nadu*², wherein it was *inter alia* held as under:

“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 it’s 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,

¹ W.P.No.38728 of 2016, dated 14.06.2017

² (1989) 4 SCC 418

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 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."

10) The learned Advocate General would submit that though the impugned order does not refer to the satisfaction of detenu being likely to be released on bail, but in the counter it has been specifically stated about his satisfaction. He took us through the order and also the counter to show that from the contents therein it can be inferred that the detaining authority took into consideration the likelihood of detenu being released on bail.

11) Preventive detention being an exception to Articles 21 and 22(1) and (2) of the Constitution of India, the detaining authority must record his satisfaction as on the date of passing of the detention order. If we accept the said submission, every detention order would pass the muster based on the subsequent pleadings of the detaining authority filed in support of the detention order.

Such a course cannot be permitted against a person whose personal liberty is sought to be curtailed by the State.

12) In *Commissioner of Police, Bombay v. Gordhandas Bhanji*³, the Supreme Court held that the order of a public authority must be only supported by the reasons contained therein and not on the reasons supplemented by way of subsequent pleadings. In this context, the following part of the said judgment is relevant.

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

13) This view was reiterated by the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner*⁴. In similar circumstances, this Court in W.P.No.25746 of 2017, relying upon the judgments referred to above, set aside the detention order passed against the detenu therein.

14) In *Champion R. Sangma v. State of Meghalaya and another*⁵ the Apex Court held as under:

³ AIR 1952 SC 16

⁴ (1978) 1 SCC 405

⁵ (2015) 16 SCC 253

“Though the detention order and even the grounds of detention record the factum of the appellant’s being in custody, no satisfaction has been recorded by the detaining authority that there was reliable material before the authority on the basis of which it would have reasons to believe that there was real possibility of his release on bail. It is not mentioned as to whether any bail application was even moved by the appellant or not, what to take out likely fate of such an application. The order is also conspicuously silent on the aspect as to whether there was any probability of indulging in activity of the appellant would be released on bail.

We thus, have no option but to hold that the detention order suffers from material illegality, thereby vitiating the same.”

15) In view of the judgments referred to above and for the aforesaid reasons, the Writ Petition is allowed. Accordingly, the impugned detention order is set aside and the detenu shall be set at liberty forthwith, provided he is not required to be kept in custody in connection with any other case/ cases registered against him.

16) There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

17.04.2018
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