

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT PETITION No.42192 of 2017

27.02.2018

Between:

Paligili Rajasekhar

..Petitioner

and

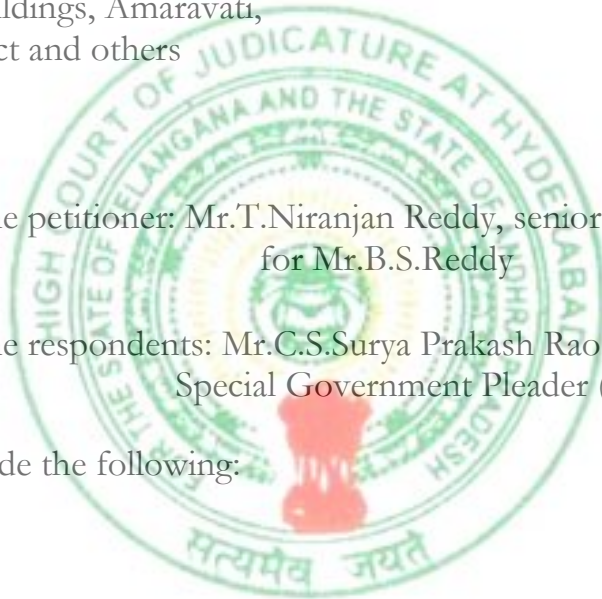
The State of Andhra Pradesh,
represented by its Chief Secretary,
Secretariat Buildings, Amaravati,
Guntur District and others

..Respondents

Counsel for the petitioner: Mr.T.Niranjan Reddy, senior counsel
for Mr.B.S.Reddy

Counsel for the respondents: Mr.C.S.Surya Prakash Rao,
Special Government Pleader (A.P.)

The Court made the following:



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

This writ petition is filed for quashing the detention order, *vide* Ref:C1/503/M/2017, dated 14.09.2017, passed by respondent No.2, as confirmed in G.O.Rt.No.2519, General Administration (SC.I) Department, dated 09.11.2017, by respondent No.1.

2. The detenu is accused of carrying on the activities of illegal falling and smuggling of red sandal. As many as ten criminal cases were registered against him from 01.02.2014 to 30.06.2016. Respondent No.2 was, therefore, constrained to invoke the provisions 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 passed the impugned detention order. In the grounds of detention, all the ten criminal cases were mentioned and crime No.67 of 2016 was the last of the crimes registered on 30.06.2016.

3. Among all other grounds, Mr.T.Niranjan Reddy, learned senior counsel representing Mr.B.S.Reddy, learned counsel for the petitioner, has laid emphasis on the ground of long gap between the date of registration of the last criminal case i.e., 30.06.2016 and the date of passing of the detention order i.e., 14.09.2017. In support of his submission that the long and unexplained gap vitiates the detention order, the learned senior counsel has placed reliance on the judgments of the Supreme Court in **Lakshman Khatik vs.**

State of West Bengal¹, Jagan Nath Biswas vs. State of West Bengal², Sk.Serajul vs. State of West Bengal³, Ahamed Mohaideen Zabbar vs. State of Tamil Nadu⁴ and Saeed Zakir Hussain Malik vs. State of Maharashtra⁵.

3. Opposing the above submissions, the learned Special Government Pleader (A.P.) appearing for the respondents has submitted that though the last criminal case was registered against the alleged detenu on 30.06.2016, he was, however, arrested only on 21.03.2017 and that within less than two months thereafter, the detention order was passed. He has further submitted that the fact of existence of long gap between the date of registration of the last crime and the date of passing of the detention order does not *ipso facto* vitiates the detention order unless there is absence of explanation on the part of the detaining authority. In support of his submissions, he has placed reliance on the judgment of the Supreme Court in **Gora vs. State of West Bengal⁶**.

4. We have considered the submissions of the learned counsel for both the parties with reference to the record.

5. In **Lakshman Khatik** (1 supra), the Supreme Court held as under.

¹ (1974) 4 SCC 1

² (1975) 4 SCC 115

³ AIR 1975 SC 1517

⁴ (1999) 4 SCC 417

⁵ (2012) 8 SCC 233

⁶ (1975) 2 SCC 14

“5. All the three grounds on which the District Magistrate purports to have reached the required satisfaction are based on incidents which took place in rapid succession in the month of August, 1971. The first incident of unloading 5 bags of rice took place in the afternoon of August 3, 1971. The second incident took place on August 5, 1971 also in the afternoon practically at the same place as the first incident. This time also some rice was removed from the trucks carrying rice. The third incident took place in the afternoon of August 20, 1971 also at the same place. That also related to the removal of some rice from loaded trucks. It is not clear from the record whether the petitioner was prosecuted for the theft, especially when it is seen that the first incident of removal of rice was witnessed by two constables. However, that might be, it appears to us that the District Magistrate could not have been possibly satisfied about the need for detention on March 22, 1972 having regard to the detenu's conduct some 7 months earlier. Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of foodgrains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of foodgrains one should think that prompt action in such matters should be taken as

soon as incidents like those which are referred to in the grounds have taken place. In our opinion, the order of detention is invalid.”

In **Jagan Nath Biswas** (2 supra), the Supreme Court held as under:

“2. The incidents themselves look rather serious but also stale, having regard to the long gap between the occurrences and the order of detention. One should have expected some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction. In the present case, Counsel for the State, Shri G.S.Chatterjee, took time to furnish an explanation as to why there was such a long delay for the District Magistrate to pass the order of detention. Unfortunately, we are no wiser today than at the previous hearing. In short, we are not taken into confidence by the District Magistrate as to why there should have been such an inordinate delay. We, in turn, therefore, are not satisfied about the bona fides of the subjective satisfaction of the District Magistrate.”

In **Sk.Serajul** (3 supra), the first incident took place on 21.11.1971, the second incident took place on 24.11.1971 and the third incident took place on 15.01.1972 and the detention order was made on 24.08.1972. Considering the said facts, the Supreme Court held as follows.

“.....There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine. But here we find that though an affidavit in reply to the petition was filed by the Deputy Secretary Home (Special) Department, Government of West Bengal no explanation was forthcoming in this affidavit as to why the order of detention was made as late as 24th August, 1972 when the last incident on which it was founded occurred on 15th January, 1972 and why the petitioner was not arrested until 22nd February, 1973, though the order of detention was made, on 24th August, 1972.”

In **Ahamed Mohaideen Zabbar** (4 supra) and **Saeed Zakir Hussain Malik** (5 supra), the Supreme Court set aside the detention orders on the grounds of unexplained/unsatisfactory explanation of the delay between the prejudicial activities and the date of passing of the detention orders.

6. No doubt, in **Gora** (6 supra) relied upon by the learned Special Government Pleader, the Supreme Court observed that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention and the question would be whether the past activities of the detenu are such that the detaining authority can reasonably come to the conclusion that the detenu was likely to continue with his unlawful activities. The Supreme Court further observed that if the detaining authority was genuinely satisfied after proper application of mind to the materials before him and came to the conclusion taking into account the past activities of the detenu that he is likely to continue to indulge in such activities in future, there would be no justification for the Court to interfere. However, in the instant case, the only explanation offered by respondent No.2 is that the alleged detenu was not arrested for a long time. In our opinion, non-arrest of the alleged detenu does not offer proper explanation as it has no relevance to the passing of the detention order. Therefore,

following the ratio laid down in the judgments of the Supreme Court as discussed above, we have no option other than setting aside the detention order only on the ground of long and unexplained gap between the date of registration of the last crime and the date of passing of the detention order.

7. The Writ Petition is, accordingly, allowed. Impugned detention order, *vide* Ref:C1/503/M/2017, dated 14.09.2017, passed by respondent No.2, as confirmed in G.O.Rt.No.2519, General Administration (SC.I) Department, dated 09.11.2017, issued by respondent No.1, is quashed. The detenu *viz.*, Paligili Siddaiah, S/o late Venkataiah is directed to be released from the detention forthwith, if he is not required in connection with any other criminal case(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

27th February, 2018
GHN