

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT PETITION No.38082 of 2018

ORDER: *(per the Hon'ble Justice Sri A.Rajasheker Reddy)*

This writ petition is filed with the following prayer:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly in the nature of WRIT OF HABEAS CORPUS, directing the respondents to release the Detenu forthwith by setting aside the detention order passed by the 2nd respondent vide proceedings No.B6/438/2018/PD dated 25.08.2018 declaring the order as illegal, null and void as it is contrary to Article 21 of Constitution of India and pass such other order or orders may deem fit and proper in the circumstances of the case.”

2. The impugned order of detention dated 25.08.2018 was passed by the second respondent under Section 3(1) and (2) read with Section 2(a) and (f) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act') on the ground that the detenu- Kishore Singh @ Satta Kishore, who is the husband of the petitioner, repeatedly involved in the activities of illegal stocking, possession, transportation, distribution and sale of ganja in contravention of Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Learned counsel for the petitioner submits that in the three crimes registered by the Prohibition and Excise Station, Dhoolpet i.e., Crime No.96 of 2018 on 19.02.2018, Crime

No.165 of 2018 on 21.04.2018, and Crime No.230 of 2018 on 25.05.2018, mentioned in the impugned order of detention and in the grounds of detention, the quantity of ganja seized from the detenu is less than the commercial quantity, as such, there is no material before the detaining authority for coming to the conclusion that the detenu is a drug offender and that his activities are prejudicial to the maintenance of public order and also dangerous to the life of public at large. He further submits that in the said three crimes, bail was granted to the detenu, but in two crimes, conditional bail was granted i.e., in Crl.M.P.No.1206 of 2018 in Crime No.165 of 2018, the learned II Additional Metropolitan Sessions Judge, Hyderabad, while granting bail to the detenu, directed him to appear before the concerned Station House Officer, Dhoolpet Excise Police Station, Hyderabad, on alternate day between 10.00 A.M. and 5.00 P.M. for a period of one month or till filing of charge sheet, whichever is earlier, and that he shall not tamper with the evidence, shall not threaten or influence the witnesses and shall cooperate in completing the investigation, and in Crl.M.P.No.1757 of 2018 in Crime No.230 of 2018, the learned I Additional Metropolitan Sessions Judge, Hyderabad, while granting bail, directed the detenu to appear before the concerned Station House Officer on every Sunday till filing of charge sheet; that these aspects were not considered by the detaining authority while passing the order of detention. He further submits that though the

past conduct of the detenu was taken into consideration, the material with regard to the same was not supplied to the detenu; that even in the detention order, it is noticed that investigation is pending in the said crimes, which goes to show that these aspects were not considered by the detaining authority, as such, the detention order has to be invalidated.

4. On the other hand, the learned Government Pleader for Home submits that the detenu was found in possession of ganja, a narcotic substance; that the activities of the detenu are prejudicial to the maintenance of public order and therefore, taking into consideration the present criminal history of the detenu, the impugned order of detention was passed to prevent him from further indulging in such activities, and therefore, he prays to dismiss the writ petition.

5. A detailed counter affidavit has been filed by the second respondent stating that the detenu involved in six offences during the years 2017 and 2018; that though the cases involved by him during the year 2017 were referred to in the detention order, the same were not relied upon; that the remaining three cases involved by him during the year 2018 alone were considered as grounds for his detention; that in all the three cases referred to in the grounds of detention, the detenu was found in possession of ganja, a narcotic substance; that he was arrested and remanded to judicial custody and subsequently, he was released on bail; that though the officials of the Excise Department went to Central

Prison, Chenchalguda, to serve the detention order, grounds of detention and the documents relied upon, both in English and Hindi, duly explaining the contents thereof in his mother tongue Hindi, the detenu refused to receive the same and therefore, the Excise Officials served the same on his son and obtained his acknowledgment; that the detaining authority, having considered the entire material placed before him, came to the conclusion that the activities of the detenu are prejudicial to the maintenance of public order and wide spread danger to public health, and accordingly passed the impugned order of detention with a view to prevent him from further indulging in such activities in the interest of the society at large. Since the detention order was passed taking note of his past and present criminal history and conduct and strictly following the mandatory provisions of the Act, the writ petition is liable to be dismissed.

6. Assertion of the learned counsel for the petitioner that the detenu was granted bail in all the three cases could not be disputed by the learned Government Pleader for Home, in two cases out of three cases bail was granted subject to imposing conditions, viz., the detenu was directed to appear before the concerned Station House Officer, Dhoolpet Excise Police Station, Hyderabad, on alternate day between 10.00 A.M. and 5.00 P.M. for a period of one month or till filing of charge sheet, whichever is earlier, and that he shall not tamper with the evidence, shall not threaten or influence the

witnesses and shall cooperate in completing the investigation; and in another case, bail was granted subject to condition of the detenu appearing before the concerned Station House Officer on every Sunday till filing of charge sheet.

7. Admittedly, the conditions imposed in the bail orders were not even referred to in the impugned detention order, except referring to orders passed in bail applications. Further, in the grounds of detention, it is stated that investigation in the said cases is pending. Therefore, the impugned detention order has to be invalidated on the ground of non-consideration of the conditions imposed in the bail order.

8. In ***M.Ahamedkutty v. Union of India***¹ and ***Union of India v. Paul Manickam***², the Supreme Court held that if the detaining authority is not in awareness of the relevant conditions in the bail orders, the detention order is liable to be quashed on the ground of non-application of mind and improper satisfaction. This is for the reason that if the conditions of bail are effective enough to prevent the *detenu* from indulging in offences in future, there would be no need for the detaining authority to invoke the provisions of the Preventive Detention Act, 1950, which is an exception to Articles 19 and 21 of the Constitution of India.

9. Following the said judgments, this Court, in W.P.No.32398 of 2018, passed order dated 09.11.2018, setting aside the detention order.

¹ (1990) 2 SCC 1

² (2003) 8 SCC 342

10. In the light of the law laid down by the Supreme Court in the judgments referred to supra, the impugned detention order is not sustainable.

11. Accordingly, the Writ Petition is allowed and the impugned detention order dated 25.08.2018 passed by the second respondent is set aside. The *detenu viz.*, Kishore Singh @ Satta Kishore is directed to be released from the detention forthwith, if he is not required in connection with any other case(s).

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 18.02.2019
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