

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.43117 OF 2018

ORDER: (Per Hon'ble Sri Justice A.Rajasheker Reddy)

This Writ Petition is filed for issue of Habeas Corpus directing the respondents to release the petitioner's son viz., Bhukya Suresh S/o.Venkati (for short 'the detenue') from detention after quashing the detention order passed by respondent No.2 vide C.No.821/WRC/CSB-X1/2018, dated 24-07-2018 under Sub-section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986 (Act No.1 of 1986) (for short 'the Act of 1986').

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the petitioner is the father of detenue. The 2nd respondent passed impugned detention order dated 24.07.2018 basing on the five criminal cases registered against detenue and the same is confirmed by the 1st respondent by its order in G.O.Rt.No.2182 dated 15.10.2018, without appreciating the material on record. Though the detenue was granted conditional bails, the said fact is not considered by the detaining authority, as such, the detention order passed by the 2nd respondent is liable to be set aside.

3. Counter affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the Writ Petition and justified the reasons for passing detention order against detenue.

4. We have heard Sri P.Prabhakar Reddy, learned counsel for the petitioner and learned Government Pleader for Home appearing for respondents.

5. Though the learned counsel for the petitioner challenged the impugned detention order on several grounds, he vehemently contended that though the detinue was enlarged on conditional bails, without considering the said aspect, the detention order was passed, as such, on this sole ground, the impugned order is liable to be set aside. He further submitted that passing of the detention without considering the conditions in bail orders is nothing but lack of subjective satisfaction of the detaining authority. In support of his contention, he relied on the judgment of this Court in WP No.38082 of 2018, dated 18.02.2019.

6. On the other hand, learned Government Pleader for Home appearing for respondents while taking us through the grounds of detention, submitted that the detinue involved in as many as 21 criminal cases and out of them only five criminal cases were considered as grounds of his detention. He submitted that the cases registered against him would show that he is a habitual offender and that he has been committing offences, which are creating fear and panic among the general public and that the detinue is acting in a manner prejudicial to the public order, as such, the 2nd respondent, considering the gravity and nature of offences committed by the detinue, rightly passed order of detention on 24.07.2018.

7. A perusal of the affidavit filed in support of the writ petition goes to show that the detinue was granted bails on 17.07.2018 in Cr.Nos.33 of 2018 of Narmetta Police Station, 93 of 2018 of Raghunathpally Police Station, 35 of 2018 and 36 of 2018 of Tharigoppula Police Station registered under Section 379 IPC and in Cr.No.68 of 2018 under Section 379 IPC of Palakurthy Police

Station on 20.07.2018 with a condition to attend police station on every two days till the filing of the charge sheet.

8. The impugned detention order passed by 2nd respondent on 24.07.2018, goes to show that the conditions imposed in the bail orders were not even referred to in the impugned detention order and not even taken into consideration, except referring to orders passed in bail applications i.e., in Cr.Nos.33/2018 of PS Narmetta, 93/2018 of Raghunathpally P.S, 35/2018 and 36/2018 of Tharigoppula PS and Cr.No.68 of 2018 on 17.07.2018 and 20.07.2018 respectively. Further in the said order, it is stated that the detainee continued to be in judicial custody for not furnishing sureties. Though the detainee was granted conditional bails, respondent No.2 has failed to consider the said conditions, as such, the impugned detention order passed by the 2nd respondent is liable to be set aside on this ground alone.

9. 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 detainee 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.

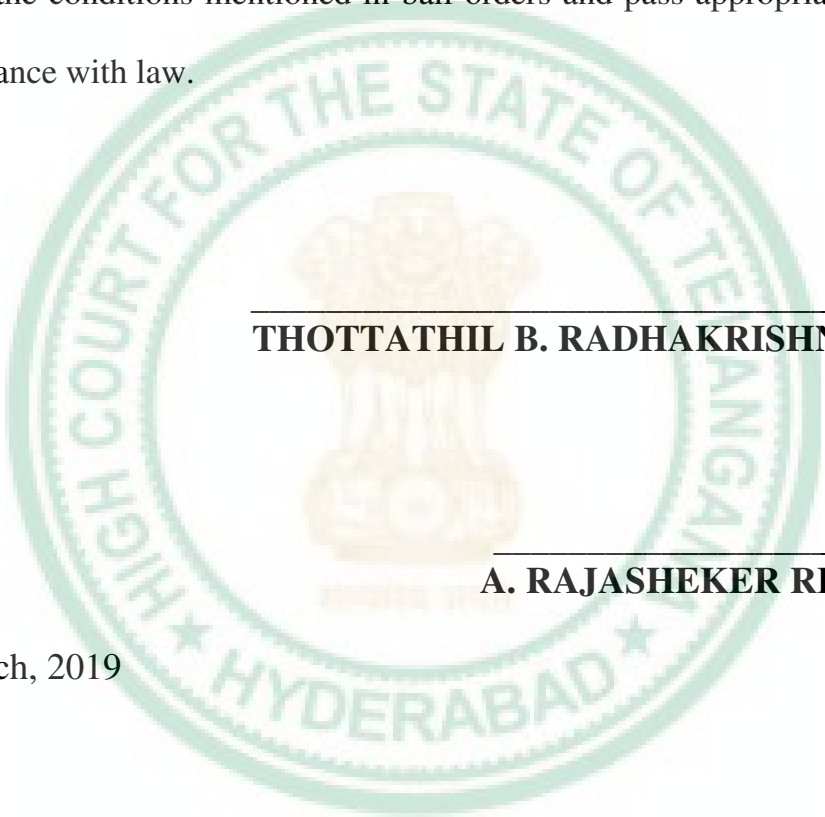
10. Following the aforesaid judgments, Division Bench of this Court in WP No.32398 of 2018, passed order dated 09.11.2018 setting aside the detention order. In the light of the law laid down by the Supreme Court in the

¹ (1990) 2 SCC 1

² (2003) 8 SCC 342

judgments referred to supra, the impugned detention order is liable to be set aside.

In the result, the Writ Petition is allowed. Impugned Detention Order vide C.No.821/WRC/CSB-X1/2018, dated 24-07-2018 of respondent No.2, as confirmed by the 1st respondent vide G.O.Rt.No.2182, dated 15.10.2018, is set aside. The detainee viz., Bhukya Suresh S/o.Venkati, is directed to be released from the detention forthwith, if he is not required in connection with any other case(s). However, it is open for the detaining authority-2nd respondent to consider the conditions mentioned in bail orders and pass appropriate orders, in accordance with law.



THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

26th March, 2019
kvs

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



P.D Judgment for Lordship's kind perusal
WRIT PETITION No.43117 OF 2018
(per Hon'ble Sri Justice A.Rajasheker Reddy)

Date: 26th March, 2019

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