2020:APHC:11243

IN THE HIGH COURT OF ANDHRA PRADESH

***

W.P. No. 9609 of 2020

Between:

P.Aruna Kumari .... Petitioner

And

The State of Andhra Pradesh & Others. .... Respondents

Date of Judgment pronounced on : 29.07.2020

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE B.KRISHNA MOHAN

1. Whether Reporters of Local newspapers may be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy of the Judgment? : Yes/No

*** HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**
AND
HON'BLE SRI JUSTICE B.KRISHNA MOHAN

+ W.P. No. 9609 of 2020

% 29.07.2020

P.Aruna Kumari, wife of P.Siva Prasad,
Aged about 50 years, resident of
D.No.20-4-19A, Chandrasekhar Reddy Colony,
Tirupati, Chittoor District.

... **PETITIONER**

Vs.

$ The State of Andhra Pradesh,
represented by its Chief Secretary,
Secretariat Buildings, Amaravathi at
Velagapudi, Guntur District & Others. ... **RESPONDENTS**

! Counsel for the Petitioner: SRI D.PURNA CHANDRA REDDY

Counsel for the Respondents: G.P. FOR HOME

<Gist :

>Head Note:

? Cases referred:

1. (2013) 4 SCC 435
2. (1989) 3 SCC 277
3. (1991) 1 SCC 476
4. (2012) 11 SCC 745
5. (1999) 1 SCC 417
6. (2015) 16 SCC 253
7. (1991) 1 SCC 128
8. (1985) 4 SCC 232
9. (1989) 4 SCC 418

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE B.KRISHNA MOHAN

W.P. No.9609 of 2020

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

1. The present Writ Petition came to be filed seeking issuance of a writ of *Habeas Corpus* by one, P.Aruna Kumar seeking production of her son Pongubala Rajesh, son of P.Siva Prasad (for short, 'detenu') now detained in Central Prison, Kadapa, vide proceedings dated 20.2.2020 in REV-CSEC0PDL(PRC)/2/2020-D.TH(C7) by the 2nd respondent herein, as confirmed by the 1st Respondent-State vide G.O.Rt.No.741, dated 28.4.2020, and set him free after declaring his detention as illegal, improper and incorrect.

2. By an order date 20.2.2020, the Collector & District Magistrate, Chittoor, ordered the detention of the detenu under Section 3(1) & (2) read with 2(a) and 2(g) of the A.P. Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act') on the ground that he is a goonda within the meaning of the Act and with a view to prevent him from acting in a manner prejudicial to the maintenance of the public order. On the date of passing of the order, the detenu was in Sub-Jail, Piler, and as such, an order came to be passed directing the Sub-Inspector of Police, Somala Police

Station, to take custody of detenu from Sub-Jail, Piler, and hand over the detenu to the Jailor, Central Prison, Kadapa and thereafter papers and materials relied upon for passing the detention order were served on the detenu. In exercise of powers conferred under Sub-Section (3) of Section 3 of the Act, the Government approved the order of detention vide G.O.Rt.No.434, dated 29.2.2020. As required under Section 10 of the Act, the detenu was produced before the Advisory Board constituted under Section 9 of the Act. The case was reviewed by the Advisory Board through Video Conference on 22.4.2020. After perusing the representation of the mother of the detenu and the grounds along with the record, the Advisory Board opined that there is sufficient case for detention of the detenu. After due consideration of the opinion of the Advisory Board and the material available on record, the Government, in exercise of the power under Sub-Section (1) of Section 12 read with Section 13 of the Act, confirmed the order of detention, dated 20.2.2020, passed by the Collector and ordered detention of the detenu for a period of 12 months.

3. The grounds of detention served on the detenu refer to the following four incidents :

The first incident relates to crime No.48 of 2018 of Somala Police Station, registered for the offences punishable under Sections 324, 323, 427, 506 read with Section 34 I.P.C.

In the said case, the detenu was arrested on 9.1.2019 and later released on bail. After filing of charge-sheet, the case was taken on file as C.C.No.9 of 2019. The accused is said to be facing trial in the said case.

The second incident relates to crime No.63 of 2018 of Somala Police Station, registered for an offence punishable under Section 25(1)(B)(a) of the Arms Act. The incident in respect of the above crime was said to have taken place on 22.12.2018 at 5.30 PM near Suraiahgaripalli Village. The detenu who was shown as second accused in the said case, was arrested and later released on bail on 27.12.2018 by the Judicial First Class Magistrate, Punganur. The case is pending trial.

The third incident relates to an incident which took place on 9.12.2019 at 2.00 PM in front of the Mango Garden of the Rameswara Prasad on Peturu-Penugolakala Road, near Peturu Village. A case in crime No.111 of 2019 came to be registered against the detenu and others for the offences punishable under Section 302 read with Section 34 I.P.C., Sections 109 and 120(B) I.P.C. The detenu, who was shown as second accused in the said case, was arrested on 15.12.2019 and subsequently he was released on bail on 18.2.2020.

The fourth incident is in respect of crime No.8 of 2020, registered for the offence punishable under Sections 420 and

506 of I.P.C. It is said that about five months prior to 1.2.2020 at 9.30 PM the detenu is said to have taken cash of Rs.50,000/- from the informant therein stating that he will provide mango plants to him for plantation, as he owns a nursery, but, after a period of two months, when the informant asked the accused about the same, the accused is said to have warned him severely. In respect of this incident, the above case came to be registered and that the detenu is in jail as on the date of passing of the detention order.

4. The grounds of detention show that the detenu is hard core criminal indulging in violent and unlawful activities having no respect towards law. It is further stated that number of cases are registered against him and there is every possibility of his release from jail. It is pleaded that if he is released on bail, there is a possibility of he killing the direct witnesses in the murder case and continue to commit contract murders. It is pleaded that his activities amount to disturbing the even tempo of public order as he is a habitual offender. His activities fall within the meaning of Section 2(g) of the Act, to term him as a goonda. Taking into consideration the above circumstances it is said that his continued presence as a civil member of the society is not desirable. However, it is submitted that on the date of passing of the detention order, he is lodged in Special Sub-Jail, Piler.

5. The material on record further indicates that on 5.5.2020 i.e., after the order of detention passed by the Collector was approved by the Government, the petitioner is said to have made a representation to the Chief Secretary of the Government of Andhra Pradesh seeking his release, but the same was neither considered nor rejected till date.

6. Having regard to the above, the learned counsel for the writ petitioner would contend that the detention order is liable to be set aside on two grounds. Firstly, long and unexplained delay in considering the representation of the detenu and secondly, the detention order being passed while the accused is in jail. It is stated that there was no basis for the detaining authority to come to a conclusion that the detenu is likely to be released on bail. In the absence of any bail application being pending seeking release in the crime for which he is lodged in jail, the satisfaction recorded by the Authority that the detenu is likely to be released on bail is ill-founded and the same is sufficient to quash the detention order.

7. In the counter-affidavit filed by the Collector, the 2nd respondent herein, it is stated that, in the order of detention the remanding authority has recorded his satisfaction about the necessity to pass the order of detention against the detenu stating that in crime No.48 of 2018 and in Crime No.63 of 2018, the detenu was granted bail and there is every

likelihood of he being granted bail in the other two crimes. Since there is likelihood of detenu coming out of bail and involve himself in offences of this nature, the detention order came to be passed to prevent him from acting in a manner prejudicial to the maintenance of the public order.

8. In so far as the delay in considering the representation is concerned, it is stated that this representation came to be made after the order of detention has been confirmed by the Government, which is impermissible. Further, the representation dated 5.5.2020 submitted to the Chief Secretary to the Government was received by the Home Department, who, after going through the representation, forwarded the same to the General Administration (SCI) Department, with an endorsement dated 19.6.2020, since the GAD was looking after preventive detention matters. On receipt of the said representation by GAD on 19.6.2020, remarks were called for vide Memo. Dated 22.6.2020 from the Collector and District Magistrate, Chittoor. The Collector, the 2nd Respondent herein, submitted the remarks to the representation and the Government, after examination of the same, rejected their representation on 26.6.2020. In view of the above, it is urged that there is no delay in considering the representation.

9. It is to be noted here that the order of detention, which was passed on 20.2.2020 specifically states that the detenu

has a right to make a representation to the detaining authority i.e., the Collector and District Magistrate, Chittoor and to the Government against his detention. Though Section 3 of the Act postulates that no order shall remain in force for more than 12 days after making thereof, unless it has been approved by the Government, but, it appears that, no time limit is prescribed for making a representation. However, the Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order.

10. As seen from paragraph-6 of the counter, the case of the detenu was placed before the Advisory Board within the said period and the Advisory Board considered the representation of the mother of the detenu made to the detaining authority. It appears that no such representation was made to the Government at that point of time.

11. Learned Government Pleader would contend that the question of making a representation again to the Government after the order of detention has been confirmed by the Government is illegal and the same requires no consideration.

12. Article 22 of the Constitution of India provides for protection against arrest and detention in certain cases.

Clauses (4) and (5) of Article 22, which deal with preventive detention, read thus :

"22. Protection against arrest and detention in certain cases :

(1) ....

(2) ....

(3) ....

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) ....

(7) ...."

13. The Constitution of India, therefore, vests a person subjected to preventive detention, with the right to make a representation against the order of detention. To facilitate exercise of this constitutional right, the detaining authority is required to communicate to the detenu the grounds on which the order has been made and also the material documents enabling him to make an effective representation to the two authorities mentioned in the order. Admittedly, it appears that representation was made to the Government on 5.5.2020, as the Government has got the power to revoke the detention order at any time. The Act does not anywhere contemplate that the detenu's right to make a representation to the Government gets extinguished once he is produced before the Advisory Board. Further, the order nowhere prescribes any time limit for making a representation to the Government.

14. Issue identical to the case on hand, namely, as to whether the detenu can independently make a representation to the Government, came up for consideration before this Court in number of cases and in W.P.No.20656 of 2018, dated 25-07-2018, this Court accepted the plea that such a representation can be made after the confirmation of the order of detention by the Government.

15. The question now is, Whether there was any substantial delay in considering the representation?

16. Admittedly, the representation dated 5.5.2020 was sent to the Government and it is to be presumed that it must have been received within a couple of days, as the counter filed by the Government is silent as to the date when it was received by the Government. In para 16 of the counter it is stated that the said representation was received by the Home Department and thereafter with an endorsement dated 19.6.2020, it was forwarded to the GAD, which was looking after the preventive detention matters. The representation was received by the GAD on 19.6.2020 and as 20.6.2020 and 21.6.2020 were holidays, called for remarks from the District Collector on 22.6.2020 and thereafter rejected the representation on 26.6.2020. From a perusal of the above, it is clear that from 5-5-2020 onwards, the representation of the petitioner was lying with the Government till 19.6.2020 i.e., for nearly 40 days. No explanation is forthcoming in the counter as to why the representation was in the Home Department till 19.6.2020 without being attended to.

17. In ***Abdul Nasar Adam Ismail v. State of Maharashtra and others*** [1] the Apex Court categorically affirmed that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention

[1] (2013) 4 SCC 435

impermissible and illegal, though no time limit is prescribed for disposal of the representation, more so, having regard to the Article 22(5) of the Constitution of India, which mandates disposal of the representation at the earliest.

18. In ***Aslam Ahmed Zahire Ahmed Shaik v. Union of India***[2] the detenu handed over his representation to the Superintendent of Jail on 16.6.1998 for onward transmission to the Central Government. It was kept unattended for a period of seven days. As a result, it reached the Government 11 days after it was handed over to the Superintendent of Jail. In the absence of any reasonable explanation given by the Superintendent of Jail, the Apex Court set aside the detention of the detenu.

19. The Constitution Bench of the Apex Court in ***K.M.Abdulla Kunhi v. Union of India***[3] held that any unexplained delay in disposal of the representation of the detenu would be a breach of constitutional imperative and will render the continued detention impermissible and illegal.

20. In ***Rashid Kapadia v. Medha Gadgil*** [4] the Apex Court was considering a case where a representation dated 6.8.2011 came to be rejected on 7.9.2011 i.e., after one month. The unexplained delay of one month in considering representation of the detenu was held to be fatal and

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[2] (1989) 3 SCC 277
[3] (1991) 1 SCC 476
[4] (2012) 11 SCC 745

accordingly quashed the detention order on the said ground alone.

21. In ***Rajammal v. State of Tamil Nadu*** [5] the Three Judge Bench of the Apex Court quashed the detention order on the ground that the State failed to explain the six days delay in disposal of the representation of the petitioner therein. The Apex Court at para 8 held as follows :

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

The Apex Court further observed that the delay of six days remains unexplained and such unexplained delay has vitiated further detention of the detenu. The corollary thereof is that further detention must necessarily be disallowed.

22. One other ground, which was raised by the petitioner, is that detaining authority erred in passing the detention order when the detenu is in jail. The fact that the detenu was in jail as on the date of passing of the order is not in dispute. He was arrested in one case and in that case he was remanded to judicial custody. No bail application was filed seeking release in that crime.

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[5] (1999) 1 SCC 417

23. In ***Champion R. Sangma v. State of Meghalaya*** [6] the Apex Court took note of the principles laid down by it earlier in ***Kamarunnissa v. Union of India*** [7] to the following effect :

> "13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in *Rameash Yadav* [8] was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."

Applying the aforestated triple requirement test, the Apex Court invalidated the order of detention as no satisfaction was recorded by the detaining authority and that no reliable material was placed before him on the basis of which he had

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[6] (2015) 16 SCC 253
[7] (1991) 1 SCC 128
[8] (1985) 4 SCC 232

reason to believe that there was a real possibility of release of the detenu on bail.

24. In ***N.Meera Rani v. Government of Tamil Nadu*** [9] the Apex Court 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 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 F.I.R. as one of the dacoits. On these facts, the order of detention passed in the present case on 7.9.1988 and its confirmation by the State Government on 25.10.1988 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's case* (supra). We hold the detention order to be invalid for this reason alone and express no opinion on merits about the grounds of detention."

25. A reading of the above judgments referred to above make it clear that there is no bar for passing a detention order while the detenu is in jai, but, the Authority should be satisfied with the three conditions specified therein before passing the order. In the absence of any bail application being filed and pending consideration seeking release, we feel that the basis for the detaining authority to believe there is a

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[9] (1989) 4 SCC 418

reasonable possibility of detenu being released on bail cannot be accepted.

26. Viewed from any angle and having regard to the law laid down and the facts in issue, more particularly there being unexplained delay in considering the representation of the detenu, the order of detention is liable to be set aside.

27. Accordingly, the Writ Petition is allowed by setting aside the order of detention dated 20.2.2020 passed by the Collector and District Magistrate, Chittoor District under Section 3(1) & (2) read with Section 2(a) and 2(g) of A.P. Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 and the proceedings of the 1st respondent-State vide G.O.Rt.No.741, dated 28.4.2020. Consequently, the detenu viz., Pongubala Rajesh, son of P.Siva Prasad, shall be set at liberty, if he is not required in any other crime. There shall be no order as to costs.

Miscellaneous applications, pending, if any, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

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JUSTICE B.KRISHNA MOHAN

Date : 29.7.2020

Note : L.R. copy to be marked.

B/O

SKMR