



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE Mr. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.25052 of 2020

(Through Video Conferencing)

G.Lakshmi Devi,
Age 37 years, Occ: Household,
W/o. G.Ravi Chandra Reddy,
Govindapalli village, Sirivella Mandal,
Kurnool District.

... Petitioner

Versus

The State of Andhra Pradesh,
Rep.by its Chief Secretary,
Secretariat Buildings,
Amaravathi at Velagapudi,
Guntur District and 3 others.

... Respondents

Counsel for the petitioner	:	Mr.D.Purna Chandra Reddy
Counsel for respondents	:	Mr. Syed Khader Masthan, GP attached to the office of Addl.Advocate General
Date of hearing	:	16.03.2021
Date of Order	:	01.04.2021

ORDER

(Per Arup Kumar Goswami, CJ)

Heard Mr.D.Purna Chandra Reddy, learned counsel for the petitioner and Mr.Syed Khader Masthan, learned Government Pleader attached to the office of Additional Advocate General, appearing for the respondents.

2) By filing this application under Article 226 of the Constitution, the petitioner prays for a writ in the nature of habeas corpus to declare the order of detention issued vide RC.No.C1/605/M/2020 dated 05.09.2020 passed by the 2nd respondent i.e., The Collector and District Magistrate, Kurnool, Kurnool District and the order of confirmation passed by the 1st respondent in G.O.Rt.No.1696, General Administration (Law & Order) department, dated 28.10.2019, as illegal and unconstitutional and consequently to direct the 4th



respondent i.e., the Superintendent, Central Prison, Kadapa, YSR Kadapa District to release Sri G.Ravi Chandra Reddy, husband of the petitioner, who is now lodged in Central Prison, YSR Kadapa District.

3) By order dated 05.09.2020 vide RC.No.C1/605/M/2020, the 2nd respondent passed the order of detention under Section 3(2) read with Section 3(1) of the Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

4) The aforesaid order of detention was passed on being satisfied that the husband of the petitioner is constantly indulging in 'Goonda' activities within the meaning of Section 2(g) of the Act, on the basis of information laid before him by the 3rd respondent i.e., the Superintendent of Police, Kurnool, Kurnool District that the husband of the petitioner has a voluminous criminal record and he is a dangerous and notorious criminal. In the grounds of detention, the details of the involvement of the husband of the petitioner in crimes committed by him, are noted as below:

1. Cr.No.75 of 2017 under Sections 147, 148, 302 read with 149 IPC and Section 25(1)(b) of Arms Act of Sirivella Police Station.

2. Cr.No.108 of 2018 under Section 120B, 460, 307, 302 read with 34 IPC and Section 25(1) of Arms Act of Bestavaripeta Police Station, Prakasam District.

3. Cr.No.72 of 2020 under Section 120B, 302 read with 115, 34 IPC and 25(1)(b) of Arms Act of Chinna Chowk U/G Police Station, Kadapa District.

5) The detaining authority also stated that the above cases are pending in the concerned courts and that the husband of the petitioner is on bail. The order of detention was approved vide G.O.Rt.No.1442, G.A.(SC.I)



Department, dated 15.09.2020. Subsequently, the Advisory Board also opined that there is sufficient cause for detention of the detenu. On consideration of the report of the Advisory Board and the material available on record, the Government, in exercise of the powers conferred under Section 12(1) read with Section 13 of the Act, by an order dated 28.10.2020, confirmed the order of detention made by 2nd respondent and directed that the detention of the husband of the petitioner be continued for a period of 12 months from the date of detention i.e., from 07.09.2020.

6) It is submitted by Mr.D.Purna Chandra Reddy that a representation dated 29.10.2020 was sent on 31.10.2020 to the Chief Secretary and the same was delivered on 04.11.2020, but, the representation was not considered and, therefore, non-consideration of the representation has vitiated the order of detention. He has further submitted that non-consideration of the bail orders by the detaining authority, though the fact of bail being granted was taken note of, has also vitiated the order of detention.

7) In the affidavit filed on behalf of respondent No.2, it was asserted that three cases referred to in the detention order were the grounds of detention of the detenu. It is also stated that the respondents are not concerned with supplying copies of bail orders in the above crimes and that the detenu can get those copies through his counsel by applying to the concerned authorities. It is further stated that a representation dated 14.09.2020 was submitted by the petitioner to the 2nd respondent and that the 2nd respondent issued a communication dated 03.10.2020 suggesting her to submit representation before the Chief Secretary or Advisory Board as the Government had already accorded approval of the detention order vide order dated 15.09.2020. The plea of the petitioner that she had submitted a representation to the Chief Secretary on 29.10.2020 was denied. It is further stated that the General Administration (SC-I) Department, Government of



Andhra Pradesh, by communication dated 19.01.2021 had informed that no representation had been received by them till then.

8) The petitioner reiterated in the reply affidavit that the representation was submitted to the Chief Secretary through registered post on 31.10.2020 and the postal tracking information taken from the India Post Website clearly shows the delivery of the postal cover in the office of the Chief Secretary on 04.11.2020.

9) In the representation dated 14.09.2020 submitted by the wife of the detenu, it is stated that she had come to know about the order passed by the Collector & District Magistrate, Kurnool District and the grounds of detention, which formed the basis for passing the order of detention. It is stated that the order of detention was passed against her husband in a mechanical manner and on vague, irrelevant and non-existent grounds and that most of the cases referred to in the order as well as in the grounds of detention were foisted against her husband due to political reasons and that her husband was arrayed as an accused in the cases based on confession made before the police officer, which was fabricated for the purpose of implicating the detenu in the cases. Accordingly, she had stated that there was no merit in the order of detention and that the same may be set aside.

10) The tracking report indicates that the item under Registration No.417559996IN which was booked on 31.10.2020, was delivered to the *Peshi* at 10.50.39 on 04.11.2020. Reliance placed on the communication dated 19.01.2021 of the General Administration (SC-I) Department that no representation was received by them does not take the case of the 2nd respondent any further. In the first place, it is not explained how the General Administration (SC-I) Department comes into picture, when the letter is addressed to the Chief Secretary of Andhra Pradesh and secondly, there is no explanation with regard to the assertion of the petitioner accompanied by



documentary evidence of a letter being addressed to the Chief Secretary, which was duly received by the A.P. Secretariat. In the face of categorical assertion in the petition, accompanied by the postal receipt as well as tracking report, it was incumbent on the part of the 1st respondent to have dealt with the aspect of submission of representation by the wife of the detenu. The assertion of the petitioner that she had submitted a representation on 29.10.2020 to the Chief Secretary is casually denied by the 2nd respondent. It is not understood how the 2nd respondent could have asserted in respect of an event with which he is not connected. Mere denial, in a matter of present nature, would not suffice when the liberty of an individual is at stake.

11) In ***Abdul Nasar Adam Ismail vs. State of Maharashtra and others***, reported in ***(2013) 4 SCC 435***, the Hon'ble Supreme 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 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.

12) In the case of ***Smt. Shalini Soni and others vs. Union of India and others***, reported in ***(1980) 4 SCC 544***, the Hon'ble Supreme Court had observed that so long it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or a reason is mentioned or suggested for such release, there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the Constitution.



13) In *K.M.Abdulla Kunhi and B.L.Abdul Khader vs. Union of India and others*, reported in *(1991) 1 SCC 476*, the Hon'ble Supreme Court held that the representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of the Constitution and, therefore, Article 22(5) casts a legal obligation on the Government to consider the representation as early as possible.

14) In the above case, the representation was submitted by the detenu through his Advocate. In the instant case, the representation was submitted by the petitioner, who is the wife of the detenu, and the fact that the detenu himself did not submit representation will make no difference.

15) In the circumstances as noted above, we have to accept that the petitioner, indeed, sent a representation dated 29.10.2020 to the Chief Secretary by registered post on 31.10.2020 and the same was not considered.

16) In view of the decisions of the Hon'ble Supreme Court noted supra, non-consideration of the representation is a breach of the constitutional imperative and the same has rendered the continued detention impermissible in law and illegal. In that view of the matter, it is not necessary for us to consider the other submission advanced by the learned counsel for the petitioner regarding non-consideration of the bail order.

17) The writ petition is allowed. The detenu shall be released forthwith, if he is not required in any other case. Pending miscellaneous applications, if any, shall stand closed.

ARUP KUMAR GOSWAMI, CJ

C. PRAVEEN KUMAR, J