

(2016) 08 AP CK 0072
In the Andhra Pradesh High Court
Case No : W.P. No. 6250 of 2016

Gattu Kavita

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 3(1)
Constitution of India, 1950 — Article 22

Citation : (2016) 3 ALTcr1 399 : (2017) 1 AndhLDCriminal 224 : (2017) CrilJ 836

Hon'ble Judges : Sri P.V. Sanjay Kumar and Sri M. Seetharama Murti, JJ.

Bench : Division Bench

Advocate : G.P. for Home (TS), for the Respondent; Mr. K Rajasekhar, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri M. Seetharama Murti, J. - Gattu Srinivas @ Gattu Srinu @ Srinu son of Ramulu, was subjected to preventive detention under order dated 31.10.2015 in proceedings No.C1/9820/2015 of the Collector and District Magistrate, Nalgonda District, passed under Section 3 (1) read with 2 (a) and (b) of Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter, ? Act 1 of 1986?).

2. Gattu Kavita, the wife of the said detenu, filed the present writ petition seeking a Writ of Habeas Corpus to produce the detenu before this Court by declaring the detention order, dated 31.10.2015, as illegal and unconstitutional. Consequential relief was sought for release of the detenu forthwith from the Central Prison, Warangal, where he is lodged.

3. The detention of the petitioner?s husband was approved by the Government

under G.O.Rt.No.2985, General Administration (Law and Order) Department, dated 10.11.2015. Thereafter, the matter was referred to the Advisory Board under Section 11(1) of Act 1 of 1986; and, after consideration of the report submitted on 17.12.2015 by the Advisory Board, the Government confirmed the detention of the petitioner's husband vide G.O.Rt.No.140, (Law and Order) Department, dated 21.1.2016, for a period of twelve months from the date of his detention, 31.10.2015.

4. We have heard Sri K.Rajasekhar, learned counsel for the petitioner and the learned Government Pleader for Home, appearing for the State.

5. Though various grounds are urged on behalf of the detenu, the main ground on which the detention of the petitioner's husband is challenged is that all the materials relied upon by the detaining authority were not made available to the detenu, who is uneducated and has acquaintance only with Telugu language.

6. It is further urged by the learned counsel for the petitioner on behalf of the detenu that in the grounds of detention, there was a reference to four crimes and that the detenu was enlarged on bail in three of the said four crimes viz., Crime No.139/2015-16, Crime No.474/2015-16 and Crime No.131/2015; the vital information that the offence alleged in the case in crime no. 131/2015 is bailable in nature and that in the other two of the three aforementioned cases, the detenu was granted conditional bail on 23.9.2015 by the learned Special Judicial Magistrate of First Class (for Prohibition and Excise Offences) at Nalgonda, was suppressed; and, the said information was not furnished by the Sponsoring Authority to the Detaining Authority; and copies of the said conditional orders of bail were also not supplied to the detenu along with the materials, which formed the basis for passing detention order; the failure to furnish the conditional bail orders to the detaining authority as well as to the detenu vitiated the order of detention.

7. In the counter affidavit of the Collector and District Magistrate, Nalgonda, it is stated that the order of detention was passed to prevent the detenu from indulging in similar offences, taking note of his past and present criminal history and conduct, and that the order of detention is legal and is one passed in accordance with the procedure and provisions of Act 1 of 1986.

8. At the hearing, it is fairly conceded that in two of the aforesaid three crimes viz., Crime No.139/2015-16 and Crime No.474/2015-16, the detenu was enlarged on conditional bail on 23.9.2015 and that in the third crime, he was enlarged on the same day as the offence therein was bailable. Copies of the said bail orders in the aforesaid crimes are produced before this court.

9. The learned Magistrate, while enlarging the detenu in Crime No.139/2015-16 and Crime No.474/2015-16 on conditional bail further imposed a condition in the said bail orders that he shall appear before the Assistant Excise Superintendent, Nalgonda, on every alternate day for a period of six weeks. Since the conditional orders are not made available to the detaining authority, there was no reference

to the conditional bail orders in the detention order dated 31.10.2015 and the grounds of detention. Therefore, the issue for consideration is whether the said impugned detention order fulfilled the requirements prescribed under Article 22 of the Constitution of India, while adhering to the procedure contemplated under law.

10. 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, reads thus:

22. Protection against arrest and detention in certain cases:

(1) ?.....

(2) ?.....

(3) ?.....

(4) No law providing for preventive detention shall authorise 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 authorise 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) . . .

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 like conditional bail orders, so as to afford him an earliest opportunity to make such a representation.

11. On the aspect of failure to refer to the conditional orders of bail in the order

and the grounds of detention, and its effect, a Division Bench of this court in *Vasanthu Sumalatha v. State of Andhra Pradesh and Others*, 2016 (1) ALT 738, having made copious reference to a number of precedents and having noted the development of law on the subject, held as follows:

"58. . . .The order and the grounds of detention should reflect the material, on the basis of which the detaining authority arrived at the subjective satisfaction of the need to detain the detenu in preventive custody. As there is no reference therein to the orders passed by Courts granting conditional bail to the detenu, the detention orders are vitiated by non-consideration of vital and relevant material. The assertion to the contrary, in the counter-affidavits filed before this Court, would not justify upholding the, otherwise, invalid detention orders."

On the relevant aspect on non-supply of copies of bail orders, it is held in the cited decision as follows:

"To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention."

12. From the ratio in the decision, it is clear that non-supply of conditional bail orders by the sponsoring authority to the detaining authority and failure to refer to the same in the order of detention and grounds of detention, and non-consideration of such vital and relevant material, invalidates the detention order. The law laid down in *Vasanthu Sumalatha's* case (1 supra), which was recently affirmed by us in W.P.No.4805/2016 to the effect that failure to supply documents relied upon by the detaining authority would result in denying an opportunity to make an effective representation as guaranteed under Article 22(5) of the Constitution of India, would squarely apply to the instant case.

13. On this short ground alone, the writ petition is to be allowed and the detention order deserves to be set aside.

14. In the result, the writ petition is accordingly allowed, setting aside the impugned detention order, dated 31.10.2015, passed by the Collector and District Magistrate, Nalgonda District, and confirmation thereof by the Government of Telangana vide G.O.Rt.No.140, General Administration (Law and Order) Department, dated 21.1.2016. The petitioner's husband shall be set at liberty forthwith, unless his confinement is required in any other case.

15. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.