
(2012) 10 AP CK 0056
In the Andhra Pradesh High Court
Case No : Writ Petition No. 24099 of 2012

J. Govardhan Reddy

APPELLANT

Vs

Collector and District Magistrate

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Constitution of India, 1950 — Article 22(3)(b)
Penal Code, 1860 (IPC) — Section 378, 379

Citation : (2013) 1 ALT 186

Hon'ble Judges : P. Durga Prasad, J;N.V. Ramana, J

Bench : Division Bench

Advocate : B. Sarvotham Reddy, for the Appellant;

Final Decision : Allowed

Judgement

N.V. Ramana, J.—The petitioner, who claims to be the son of the detenu, namely Junnuthula (Dunnuthala) Gopi Reddy, who is now detained in Central Prison, Cherlapally, has filed this writ petition praying for a writ of Habeas Corpus, directing the respondents to produce the detenu before this Court and set him at liberty forthwith. The Divisional Forest Officer, Kadapa, YSR District, informed respondent No. 1, namely the Collector and District Magistrate (hereinafter referred to as "the Detaining Authority") that the detenu since last two years is involved in illicit felling of red sanders, smuggling them to secret and unknown places in India and abroad, and that he is involved in four forest offences, namely in O.R. No. 47/2011-12, dated 22-7-2011 of Sidhout Range; Crime No. 55/2012, dated 07-08-2011 of Vontimitta Police Station and O.R. Nos. 171/2011-12, dated 08-02-2012; 139/2011-12, dated 03-12-2011 and 157/2011-12, dated 18-01-2012 of Vontimitta Range, which were registered against him for the offences punishable under Sections 20, 29 and 44 of the A.P. Forest Act, 1967 and Rule 3 of the A.P. Sandal Wood and Red Sander Wood Transit Rules, 1969 and the provisions of Sections 378 and 379 I.P.C. In connection with the offences in three cases, the detenu obtained anticipatory bail, while in the case

of offence in O.R. No. 157/2011-12, dated 18-01-2012 of Vontimitta Range, the detenu was arrested on 06-03-2012 and the Judicial Magistrate of First Class, Sidhout, remanded him to judicial custody till 19-03-2012. While the detenu is in judicial custody, considering the fact that the illegal activities of the detenu, is causing wilful destruction of red sander trees, which is an endangered species, and causing damage to public property, resulting in depletion of green cover and loss of national wealth, and as his activities are prejudicial to the maintenance of public order, disturbing the peace, tranquility and social harmony in the society, and as the forest laws and ordinary law under which the detenu is being prosecuted are not sufficient in the ordinary course to deal with him firmly, respondent No. 1-detaining Authority, in exercise of the powers conferred on him u/s 3(1) and (2) of the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbing Act, 1986 (hereinafter referred to as "the Preventive Detention Act"), with a view to prevent the detenu from commission of similar such activities, which is resulting in plundering of national wealth, vide order dated 07-03-2012 ordered the detention of the detenu in prison. Thereafter, based on the recommendations of the Advisory Board, respondent No. 2- Government, by order dated 24-04-2012, confirmed the order of detention. Hence, questioning the said order of detention, passed by respondent No. 1-Detaining Authority for detention of the detenu in prison, as confirmed by respondent No. 2-Government, the petitioner filed the present writ petition.

2. The learned counsel for the petitioner submitted that the four cases registered against the detenu for the offences punishable under the A.P. Forest Act and the Indian Penal Code, which formed the basis for passing the order of detention by respondent No. 1-Detaining Authority are false. He submitted that the detenu obtained anticipatory bail in three cases, while in one case, he was arrested on 06-03-2012 and produced before the Magistrate, and his application for bail having been dismissed, was remanded to judicial custody. Since the application of the detenu for his release on bail was dismissed and he having not made any fresh application for his release on bail, the possibility of his coming out of jail and indulging in commission of similar such activities, which are allegedly prejudicial to the maintenance of public order does not arise. However, respondent No. 1-Detaining Authority, without considering this aspect of the matter and also the fact that the detenu had obtained anticipatory bail in three cases, has passed the order of detention, which is liable to be set aside as it suffers from his lack of subjective satisfaction. In support of his argument that non-placing of bail orders obtained by the detenu would vitiate the subjective satisfaction of the Detaining Authority, placed reliance on the judgment of the Apex Court in Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, . He thus prayed that the writ petition be allowed and the order of detention passed by respondent No. 1-Detaining Authority against the detenu, as confirmed by respondent No. 2-Government be set aside.

3. On behalf of the respondents, respondent No. 1-Detaining Authority, namely

the Collector and District Magistrate filed counter. The learned Assistant Government Pleader representing the learned Advocate General for the respondents, reiterating the stand taken by the respondents in their counter submitted that the detenu is habitually indulging in illicit felling of red sander trees by trespassing into forest area, smuggling and transporting them out of the reserved forest owned by the State, that his activities are not only dangerous to the rare species of red sanders, but also causing damage to the pristine forest wealth. His activities are also prejudicial to the maintenance of public order, and for commission of such offences, the detenu is punishable under the provisions of the A.P. Forest Act and the Rules made thereunder and the provisions of the Indian Penal Code. The detenu has committed as many as four offences in a span of two years, and as the ordinary laws under which he is being prosecuted are not sufficient to deal with his activities, respondent No. 1-Detaining Authority, with a view to prevent the detenu from indulging in commission of similar such crimes, has, passed the order of detention by invoking the Preventive Detention Law, which was confirmed by respondent No. 2-Government. He further submitted that though the application of the detenu for his release on bail was dismissed by the Magistrate and he is in judicial custody, but the same by itself, does not bar the Detaining Authority, to pass an order of detention under the Preventive Detention Law, if the Detaining Authority is satisfied that there is every possibility of the detenu being released on bail in the pending cases, and upon such release, the detenu would indulge in commission of similar such offences and act in a manner breaching public order or law and order, and therefore, there is every need to detain him under the Preventive Detention Law. He further submitted that the anticipatory bail orders obtained by the detenu in the three cases were placed before respondent No. 1-Detaining Authority and as such, it should be taken that respondent No. 1-Detaining Authority, has passed the order of detention after taking them into consideration. In support of his argument that there is no prohibition in law to pass order of detention against a person who is already in judicial custody, he placed reliance on the judgment of the Apex Court in Huidrom Konungjao Singh Vs. State of Manipur and Others, . Hence, he prayed that the order of detention, passed by respondent No. 1-Detaining Authority, as confirmed by respondent No. 2-Government, be upheld and the writ petition be dismissed.

4. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader representing the learned Advocate General for the respondents.

5. In the light of the arguments advanced by the respective parties the question that arises consideration, in this writ petition is:

Whether the order of detention passed by respondent No. 1-Detaining Authority, as confirmed by respondent No. 2-Government, suffers from lack of subjective satisfaction of the Detaining Authority, because the anticipatory bail orders obtained by the detenu in three cases were not placed before respondent No. 1-

Detaining Authority and at the time when the order of detention was passed, the detenu was in judicial custody as his application for bail was dismissed?

6. Preventive Detention the law is well settled, that it is not punitive, but only preventive, and therefore, before passing an order of detention against a person, which takes away his liberty, the Detaining Authority, has to satisfy for itself whether there is sufficient material placed before him, to prevent the person from acting in a manner prejudicial to public order or the like, in the near future. In *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, a three-Judge Bench of the Apex Court, having considered the scope, nature and limits of preventive detention, whether it is preventive or punitive in the light of the constitutional provisions held as follows:

It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive? Further, in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a "jurisdiction of suspicion". The detaining authority passes the order of detention on subjective satisfaction. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except, during war time). Since, however, Article 22(3) (b) of the Constitution permits preventive detention, it cannot be held illegal. But the power of preventive detention must be confined to very narrow limits, otherwise the great right to liberty won by our Founding fathers, who were also freedom fighters, after long, arduous and historical struggles, will become nugatory. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is mandatory and vital.

7. From the law, as stated by the Apex Court, it is clear that power of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards have to be followed by the Detaining Authority while passing an order of detention against a person for his detention in prison.

8. Now coming to the question involved in the case, it is the case of the petitioner that the order of detention suffers from subjective satisfaction of respondent No. 1-Detaining Authority, inasmuch as the anticipatory bail orders obtained by the detenu were not placed before him, and therefore, the same should be rendered invalid.

9. In *Rushikesh Tanaji v. State of Maharashtra* (1 supra), the Apex Court having considered the effect of non-placing of bail orders obtained by the detenu before the Detaining Authority, held as follows:

In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our opinion, the detention order is rendered invalid.

10. The detenu obtained anticipatory bail in O.R. No. 47/201142, dated 22-07-2011, vide order dated 04-08-2011, passed by I Additional Sessions judge, Kadapa, in Crl.P. No. 937 of 2011; Crime No. 55"2012, dated 07-08-2011, vide order dated 25-08-2011 passed by I Additional Sessions Judge, Kadapa, in Crl.P. No. 1091 of 2011 and in O.R. No. 139/2011-12 dated 03-12-2011, vide order dated 19-01-2012 passed by I Additional Sessions Judge, Kadapa, in Crl.P. No. 35 of 2012. Even though in the counter filed by respondent No. 1-Detaining Authority, it is stated that the Sponsoring Authority has placed all the relevant and proper facts (anticipatory bail orders obtained by the detenu) before him, but none of the details of the bail orders obtained by the detenu in the three cases are not reflected in the order of detention which gives rise to an impression that respondent No. 1-Detaining Authority, is not aware of the anticipatory bail orders obtained by him in the three cases. The fact that respondent No. 1-Detaining Authority, is not aware of these anticipatory bail orders obtained by the detenu in the three cases is evident from the order of detention itself, in that respondent No. 1-Detaining Authority having noted that the detenu is involved in four different cases relating to forest offences, observed that the detenu is trying to get anticipatory bail in one case out of four registered cases and that if he is let free, he will indulge in prejudicial activities, which is required to be prevented. Therefore, we hold that respondent No. 1-Detaining Authority was not aware of the anticipatory bail orders obtained by the detenu in three cases. Since respondent No. 1-Detaining Authority passed the order of detention, without being aware of the bail orders obtained by the detenu in three cases, the same suffers from his subjective satisfaction and therefore has to be rendered invalid.

11. Further, it is the case of the petitioner that when the order of detention was passed, the detenu was in judicial custody, and his application for bail having been dismissed, and he having not filed any fresh application for his release on bail, the possibility of his coming out of jail in the near future does not arise, and as such, there was no necessity for respondent No. 1-Detaining Authority, to pass order of detention. However, the learned Assistant Government Pleader contended that there is no prohibition in law to pass the detention order against a person who is already in judicial custody.

12. The question, can a person in jail custody be served with an order of detention while he is in such custody, was considered by the Constitution Bench of the Apex Court in Rameshwar Shaw Vs. District Magistrate, Burdwan and

Another, . The Apex Court having considered the said question in the light of the provisions of Section 3 of the Preventive Detention Act, held:

The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner? At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is on the basis of the order u/s 3(1)(a) and this basis is clearly absent in the case of the petitioner.

(Emphasis supplied)

13. In *Hudrom Konungjao Singh v. State of Manipur* (2 supra), the judgment of the Apex Court, on which the learned Assistant Government Pleader placed reliance to contend that there is no bar for the Detaining Authority to pass an order of detention while the detenu is in judicial custody, reference to the judgment of a three-Judge Bench in *Rekha v. State of Tamil Nadu* (3 supra), was made, wherein it was contended that since the detenu was in judicial custody, the order of detention could not have been passed by the Detaining authority. The Apex Court in order to consider the said contention, perused the grounds of detention and upon perusing them, observed as follows:

A perusal of the above statement in para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the concerned court. Neither the date of the alleged bail orders has been mentioned therein nor the bail application number nor whether the bail orders were passed in respect of the co-accused on the same case nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon.

14. The apex Court further observed:

In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

15. The Apex Court having observed so, held as follows:

Where a detention order is served on a person already in jail, there should be a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

16. Holding as above, the Apex Court, set aside the order of the High Court, which upheld the order of detention passed against the detenu by the Detaining Authority.

17. In the instant case, respondent No. 1-Detaining Authority, as is evident from the order of detention, except having the knowledge that the detenu is involved in four cases, has no information as to the anticipatory bail orders obtained by the detenu in three cases and his having been arrested in one case and remanded to judicial custody and in fact, he being in judicial custody when he passed the order of detention. That being so, and considering the fact that the order of detention was passed by respondent No. 1-Detaining Authority, as confirmed by respondent No. 2-Government, while the detenu was in judicial custody and that too when his application for his release on bail was dismissed and when he did not make any fresh application for bail, and in such a situation, the possibility of his being released on bail in the near future, does not arise, and further having regard to the fact that the validity of order of detention, passed while the detenu was in judicial custody and when no application for his release

on bail was pending, was already considered by a three-Judge Bench of the Apex Court in *Rekha v. State of Tamil Nadu* (3 *supra*), wherein it was held that "if no bail application is pending, there is no likelihood of the person in custody being released on bail, and therefore, the order of detention would be illegal", and the law laid down therein, having been consistently followed by the Apex Court in its subsequent judgments *Yumman Ongbi Lembi Leima Vs. State of Manipur and Others*, , *Munagala Yadamma Vs. State of A.P. and Others*, and very recently in an unreported judgment in *K. Nageswara Naidu v. Collector and District Magistrate, YSR Kadapa District* (7) Criminal Appeal No. 1113 of 2012, dated 26-07-2012, we are of the considered opinion that the order of detention passed by respondent No. 1-Detaining Authority, as confirmed by respondent No. 2-Government, suffers from his lack of subjective satisfaction, and as such, is liable to be set aside. Accordingly, the writ petition is allowed. Consequently the order of detention dated 07-03-2012 passed by respondent No. 1-Detaining Authority, as confirmed by respondent No. 2-Government by order dated 24-4-2012, is set aside. The detenu shall be released forthwith if he is not required in any other case. No costs.