
(2012) 06 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7915 of 2012

Malikireddy Vijaya Bhaskar Reddy

APPELLANT

Vs

The District Collector and District Magistrate, Kadapa, YSR
District and others.

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders,
Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 2(g)
Arms Act, 1959 — Section 25(1B)(a), 25(1B)(b)
Penal Code, 1860 (IPC) — Section 120B, 212, 214, 378, 379

Citation : (2012) 2 ALD(Cri) 490 : (2012) 6 ALT 175 : (2012) 3 ALT(Cri) 189

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

Bench : Division Bench

Advocate : Suresh Kumar Reddy Kalava, for the Appellant;

Final Decision : Dismissed

Judgement

Sri N.V. Ramana, J.—The petitioner, who claims to be the nephew of the detenu, namely Sri. Malikireddy Gangadhar Reddy, who is now detained in Central Jail, Kadapa, in pursuance of the order of detention dated 05.10.2011, passed by respondent No. 1, namely the Collector and District Magistrate, Kadapa, as confirmed by respondent No. 2, namely the Government, vide orders issued in G.O. Rt. No. 5147, dated 15.11.2011, has filed this writ petition praying to issue a Writ of Habeas Corpus, by declaring that the orders of detention are illegal and the detention of the detenu in pursuance thereof, is void and consequently to set him at liberty forthwith. Respondent No. 1, namely the District Collector and Magistrate, 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"), vide his order dated 05.10.2011, ordered the detention of the detenu in prison, on the ground that the detenu is involved in 18 cases relating to illicit cutting, storing and transportation of red

sanders wood from the forests of the State, which he committed within a span of two and a half years, and that he being a habitual offender, has become a source of potential danger to the public well being and his illegal activities apart from causing damage to public property, resulting in tremendous loss to national wealth, depletion of green cover, are prejudicial to the maintenance of public order, and the forest laws under which he is charged are found not sufficient in ordinary course to deal with him firmly, and such, his detention to prevent the detenu from further indulging in boot logging activity, under the provisions of the Preventive Detention Act, is necessary. Thereafter, respondent No. 2, namely the Government, based on the report of the Advisory Board, and considering the activities of the detenu are not only corroding the rare species of pristine red sanders, but also leading to disturbance of peace, tranquility and public order, and as he has become a potential danger to the public at large, confirmed the order of detention passed by respondent No. 1 by issuing G.O. Rt. No. 5147, dated 15.11.2011. Questioning the said order of detention passed by respondent No. 1, as confirmed by respondent No. 2, the petitioner filed the present writ petition.

2. The learned counsel for the petitioner submitted that respondent No. 1, while passing the order of detention under the provisions of the Preventive Detention Act, apart from taking into consideration 18 incidents, referred to in the grounds of detention, has also taken into consideration, two other incidents in Crime No. 9 of 1992 and Crime No. 20 of 1997, which are irrelevant. This apart, the said incidents being stale and old and having ended in acquittal of the detenu, are irrelevant to the order of detention. Therefore, the order of detention, passed by respondent No. 1, as confirmed by respondent No. 2, taking into consideration the said two old and stale incidents, which ended up in acquittal of the detenu, is liable to be set aside.

3. The learned counsel for the petitioner further submitted that ground No. 18, referred to in the grounds of detention, namely Crime No. 119/2011 of Lingala Police Station, registered against the detenu, relates to an offence punishable under Sections 25(1B)(A) of the Indian Arms Act, and the same is irrelevant to the passing of order of detention against the detenu. According to him, respondent No. 1 has passed the order of detention, terming the detenu as a "goonda". He drew our attention to the definition of the term "goonda" as defined in Section 2(g) of the Preventive Detention Act, and submitted that a person who commits or attempts or abets commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, alone is treated as a "goonda". Since committing or attempting or abetting the commission of offences punishable under the Indian Arms Act, are not covered within the definition of the term "goonda" as defined in Section 2(g) of the Preventive Detention Act, he submitted that the order of detention, passed by respondent No. 1, as confirmed by respondent No. 2, is liable to be set aside, because it is passed taking into consideration an irrelevant ground. The learned counsel in support of his argument, that if one of the grounds mentioned in the

order of detention is irrelevant, then such order of detention cannot be sustained and is liable to be set aside, placed reliance on the judgment of the Apex Court in *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others*, and of this Court in *Mohammed Fayaz Ali @ Fayaz Vs. The Chief Secretary, Government of Andhra Pradesh, The Commissioner of Police and The Advisory Board*,

4. He thus prayed that the order of detention passed by respondent No. 1, as confirmed by respondent No. 2, be set aside and the writ petition be allowed.

5. On the other hand, the learned Assistant Government Pleader representing the learned Advocate General for the respondents-State, reiterating the counter averments, submitted that Ground No. 18 mentioned in the grounds of detention, cannot be treated as an irrelevant ground. She submitted that the detenu is accused in eighteen forest offences, and one such being the crime mentioned in Ground No. 17, namely Crime No. 118 of 2011 of Lingala Police Station, was registered against him for the offences punishable under the provisions of IPC, A.P. Forest Act, 1967 and A.P. Red Sander and Sandal Wood Transit Rules, 1969. The detenu was arrested in the said crime, and during the course of investigation, he confessed that he possessed SBML gun and that he was making use of the same for his self-defence and for commission of offences while escorting the vehicles that illegally transport the red sanders. Based on the confession of the detenu, the police recovered the SBML gun from the residence of the detenu, and thereafter, a separate case in Crime No. 119 of 2011 of Lingala Police Station, for the offences punishable under the Indian Arms Act, was registered against him. She submitted that even though Crime No. 119 of 2011 registered against the detenu, for the offences punishable under the Indian Arms Act, came to be registered as a separate case, but since it was registered based on the confession made by him during the course of investigation of the case in Crime No. 118 of 2011, it cannot be treated as a crime, independent of the case in Crime No. 118 of 2011.

6. Rebutting the arguments of the learned counsel for the petitioner, the learned Assistant Government Pleader representing the learned Advocate General submitted that only 18 incidents referred to in the grounds of detention, formed the basis for the detaining authority, namely respondent No. 1, to pass the order of detention, as confirmed by respondent No. 2. Respondent No. 1, having referred to the 18 incidents in the grounds of detention, to show the detenu was involved in two other cases in Crime No. 9 of 1992 and Crime No. 20 of 1997, which ended in acquittal, referred them in the order of detention. Mere reference of the said cases in the order of detention, would not vitiate the subjective satisfaction of respondent No. 1, particularly when they did not form the basis, to pass the order of detention against the detenu, as confirmed by respondent No. 2. To substantiate her argument that respondent No. 1 in the passing of the order of detention, has based his satisfaction only on the 18 incidents and not on the two stale crimes referred to by him in the order of detention, drew our

attention to the phraseology used by respondent No. 1 in the order of detention, which read "besides the above cases, the detenu is involved in following criminal cases", as also the order of respondent No. 2, which confirmed it. In support of her argument that even if the accused is discharged or acquitted in cases, the same would not bar the detaining authority from passing order of detention, placed reliance on the judgment of the Apex Court in *Sadhu Roy Vs. The State of West Bengal*, She thus submitted that order of detention passed by respondent No. 1, as confirmed by respondent No. 2, be upheld and the writ petition be dismissed.

7. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader representing the learned Advocate General for the respondents-State.

8. In the background of the arguments advanced by the rival parties, the following two questions arise for consideration in this writ petition:

1. Whether Ground No. 18, which relates to a case in Crime No. 118 of 2011 of Lingala Police Station, registered against the detenu for the offence punishable under the Indian Arms Act, is an irrelevant ground, and if so, whether the order of detention passed by respondent No. 1, as confirmed by respondent No. 2, taking into consideration the said ground also, is liable to be set aside?

2. Whether respondent No. 1, in passing the order of detention, as confirmed by respondent No. 2, has based his satisfaction on two stale and old incidents in Crime No. 9 of 1992 and Crime No. 20 of 1997, which ended in acquittal of the detenu?

9. The detenu is alleged to be the main person organizing the felling of red sanders trees from the nearby reserve forest areas owned by the Government, by providing vehicles for transporting the illegal cut red sanders wood, hiring of labours from the fringe forest villagers through his agents for smuggling and that he is responsible for destruction of valuable government property i.e. red sanders, which is classified as an endangered and endemic species. As can be seen from the order of detention, the sponsoring authority, brought to the notice of respondent No. 1 that the detenu, is involved in eighteen forest offences. They are:

1. Crime No. 40 of 2009 on the file of Pulivendula Police Station, dated 09.03.2009, for the offence punishable u/s 379 IPC, Section 29(4)(a)(i) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

2. Crime No. 42 of 2010 on the file of Khajipeta Police Station, dated 31.03.2010, for the offences punishable under Sections 379 and 511 IPC.

3. O.R. No. 57 of 2010-11, dated 07.08.2010 of Badvel Range, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and

Sections 378 and 120B IPC.

4. O.R. No. 17/2010-11, dated 25.05.2010 of Proddatur Range, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378 and 120B IPC.

5. O.R. No. 44/2010-11, dated 29.08.2010 of Proddatur Range, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378 and 120B IPC.

6. O.R. No. 82/2010-11, dated 21.09.2010 of Badvel Range, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378 and 120B IPC.

7. O.R. No. 102/2010-11, dated 03.10.2010 of Flying Squad Party, Kadapa Range of F.S. Division, Kadapa, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378 and 120B IPC.

8. O.R. No. 197/2010-11, dated 27.01.2011 of Flying Squad Party, Kadapa, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378, 379 and 120B IPC.

9. O.R. No. 43/2010-11, dated 16.02.2011 of Muddanur Range, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378 and 120B IPC.

10. Crime No. 61 of 2011 on the file of Yellanur Police Station, dated 24.07.2011, for the offence punishable u/s 379 IPC, Sections 20(i)(c)(iii) and 29 of the A.P. Forest Act, 1967 r/w Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

11. Crime No. 105 of 2011 on the file of Lingala Police Station, dated 30.07.2011, for the offences punishable u/s 379 IPC, Section 29(4)(a)(i) of the A.P. Forest Act, 1967 read with Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

12. O.R. No. 17.2011-12, dated 13.08.2011 of Muddanur Range, dated 12.08.2011, for the offences punishable u/s 20(1)(c)(ii)(iii)(iv) (x) and Section 29(2)(b) of the A.P. Forest Act, 1967 r/w Rule 3 of A.P. Red Sanders and Sandal Wood Transit Rules, 1969 and Sections 378 and 120B IPC.

13. Crime No. 61 of 2011 on the file of Vemula Police Station, dated 19.08.2011, for the offences punishable u/s 379 IPC, Section 29(4)(a)(i) of the A.P. Forest Act, 1967 r/w Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules,

1969.

14. Crime No. 92 of 2011 on the file of Vempalli Police Station, dated 22.08.2011, for the offences punishable u/s 379 IPC, Section 29(4)(a)(i) of the A.P. Forest Act, 1967 r/w Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

15. Crime No. 111 of 2011 on the file of Khajipeta Police Station, dated 25.08.2011, for the offences punishable u/s 379 IPC, Sections 20(i)(c)(iii) and 29 of the A.P. Forest Act, 1967 read with Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

16. Crime No. 112 of 2011 on the file of Lingala Police Station, dated 30.08.2011, for the offences punishable u/s 379 IPC, Section 29(4)(a)(i) of the A.P. Forest Act, 1967 r/w Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

17. Crime No. 118 of 2011 on the file of Lingala Police Station, dated 26.09.2011, for the offences punishable u/s 379 IPC, Section 29(4)(a)(i) of the A.P. Forest Act, 1967 r/w Rule 3 of the A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

18. Crime No. 119 of 2011 on the file of Lingala Police Station, dated 16.09.2011, for the offences punishable u/s 25(1B)(a) of the Indian Arms Act.

10. From the above, it is evident that the detenu is alleged to be habitually indulging in commission of theft of red sanders from the reserve forests of the government. He is accused in eighteen in cases. He is alleged to have committed all these offences within a span of two and a half years. Except in one case, namely Crime No. 119 of 2011, which is registered for the offence punishable u/s 25(1B)(A) of the Indian Arms Act, all the other 17 crimes, are registered against the detenu, for the offences punishable under the provisions of the Indian Penal Code, A.P. Forest Act, 1967 and A.P. Red Sanders and Sandal Wood Transit Rules, 1969.

In re question No. 1:

11. According to the petitioner, the order of detention has been passed by respondent No. 1, as confirmed by respondent No. 2, terming the detenu as a "goonda". As per Section 2(g) of the Preventive Detention Act, a person can be termed as "goonda" only when it is proved that either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XXI or Chapter XVII or Chapter XXII of the Indian Penal Code. Since Ground No. 18 relates to an offence u/s 25(1B)(A) of the Indian Arms Act, which does not fall either under Chapter XVI or XVII or XXII of the Indian Penal Code, the learned counsel contends that the order of detention, terming the detenu as "goonda" is vitiated, because it is an irrelevant ground.

12. There can be no doubt that if one of the grounds or reasons that lead to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be vitiated. In *Mustakmiya Jabbarmiya Shadikh v. M.M. Mehta*, on which the learned counsel for the petitioner placed reliance, the detenu challenged the order of detention terming him as a "dangerous person". One of the grounds of detention, based on which the order of detention was passed is that the detenu was involved in offences punishable under Sections 212/ 214 of the Indian Penal Code. The Apex Court considered the definition of "dangerous person", as defined in Section 2(c) of the Gujarat Prevention of Anti-Social Activities Act, 1985, and held that in order to bring a person within the definition of Section 2(c) of the Act, it is essential to show that such person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V or the Arms Act. And as the offences punishable under Sections 212/ 214 fall under Chapter XI of the Indian Penal Code and not under any of the Chapters XVI or XVII which is the requirement of Section 2(c) of the Act, the Apex Court held that the said incident cannot be made basis for satisfaction of the detaining authority that the petitioner is a habitual offender, so as to sustain the order of detention, and accordingly set aside the order of detention.

13. Similar contention, as is raised by the petitioner in this case, came up for consideration before this Court in *Mohammed Fayaz Ali @ Fayaz v. Chief Secretary, Government of Andhra Pradesh*, on which the learned counsel for the petitioner placed reliance. In the said case, the order of detention passed by the detaining authority, terming the detenu as "goonda" as defined u/s 2(g) of the Detention Act, was questioned by the detenu contending that out of the nine crimes mentioned in the grounds of detention, one crime, registered for the offence punishable under

14. Section 25(1B)(b) of the Indian Arms Act, was irrelevant. This Court having considered the definition of "goonda", as defined in

15. Section 2(g) of the Detention Act, held that a person can be considered as a "goonda" only when it is proved that either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, and since the offence punishable under

16. Section 25(1B)(b) of the Indian Arms Act, is an offence that does not fall under Chapter XVI or Chapter XVII or Chapter XXII, the detenu cannot be treated as "goonda", and holding so, set aside the order of detention, as the satisfaction was based on an irrelevant ground.

17. There can be no dispute about the ratio laid down by the Apex Court and this Court in the aforesaid judgments, but they are distinguishable with the facts of

the present case. In the instant case, Ground No. 18, i.e. incident in Crime No. 119 of 2011 relates to an offence punishable u/s 25(1B)(A) of the Indian Arms Act, and no doubt, is not covered within the offences that fall under Chapter XVI or Chapter XVII or Chapter XXII, but as can be seen from the order of detention, the detenu is involved in 18 cases relating to forest offences, which he committed within a span of two and a half years. It is the case of the respondents that the detenu was arrested in connection with case in Ground No. 17 i.e. Crime No. 118 of 2011, and during the course of investigation of the said case by the police, he is said to have confessed that he was possessing one SBML gun and that he was making use of the same for his self-defence and for commission of forest offences, and that he uses the same for escorting the vehicles employed for illegal transportation of red sander vehicles from the reserved forests of the State, and that at his instance, they having recovered SBML gun from the bathroom of his residence under a cover of panchanama (copy of which is filed), registered a separate crime in Crime

18. No. 119 of 2011. Admittedly, Crime No. 119 of 2001 and Crime

19. No. 118 of 2011 were registered on the same day on 26.09.2011. Though Crime No. 119 of 2011 is registered as a separate offence for the offence punishable u/s 25(1B)(A) of the Indian Arms Act, but since the same arises out of the commission of offence in Crime No. 118 of 2011 and forms part thereof, it cannot be said to be an irrelevant ground. Hence, no exception can be taken to the order of detention passed by respondent No. 1, as confirmed by respondent No. 2.

In re question No. 2:

20. It is the contention of the petitioner that respondent No. 1 in the passing of the order of detention, as confirmed by respondent No. 2, apart from taking into consideration 18 incidents, has also taken into consideration two other stale incidents in Crime No. 9 of 1992 and Crime No. 20 of 1997, in which the detenu was already acquitted, and as such, the order of detention is vitiated. This contention of the petitioner cannot be accepted. A reading of the order of detention issued in Rc. No. C1/658/M/2011, dated 05.10.2011 and the grounds of detention in Rc. No. C1/658/M/2011, dated 05.10.2011, by respondent No. 1 would disclose that he had taken into consideration only the 18 crimes in which the detenu is involved, to form his subjective satisfaction that the detention of the detenu is necessary under the Preventive Detention Act. The fact that respondent No. 1 did not base his subjective satisfaction on those two crimes, is evident from the language used by him in the order of detention, where after referring to the eighteen crimes in which the detenu is involved, he recorded that "besides the above cases, the detenu is involved in two criminal cases", which clearly indicates that respondent No. 1 had taken into consideration only eighteen crimes in which the detenu was involved, for arriving at his subjective satisfaction, to pass order of detention against the detenu. Even respondent No. 2, which confirmed the order of detention, in their order issued in G.O. Rt. No.

5147, dated 15.11.2011, had taken into consideration only the 18 crimes in which the detenu is involved. This is evident from respondent No. 2 in para 4 of the said order observed that the detenu is found to be involved in as many as 18 cases for the offences under the A.P. Forest Act, 1967, Sandal and Red Sandal Wood Transit Rules, 1969 as well as under Sections 120B, 378, 379 of IPC and u/s 25(1B)(a) of the Indian Arms Act.

21. Though respondent No. 1 based his satisfaction on the 18 grounds, but he merely referred to the cases in Crime No. 9 of 1992 and Crime No. 20 of 1997 in which the detenu was acquitted. Merely because respondent No. 1 had made a mention of Crime No. 9 of 1992 and Crime No. 20 of 1997 in which he was acquitted, in the order of detention, it cannot be said that he has based his satisfaction on the said two crimes also. Hence, respondent No. 1, in the passing of the order of detention, as confirmed by respondent No. 2, cannot be said to have based his satisfaction on the said two stale and old incidents in Crime No. 9 of 1992 and Crime No. 20 of 1997, in which the detenu was acquitted.

22. The detenu is alleged to be habitually indulging in illicit cutting, storing, transportation and smuggling of red sanders, which is said to be corroding the rare species of pristine red sanders and national wealth, which belongs to the public at large. The fact that he is habitually indulging in such illegal activities is evident from the fact that he is said to be involved in 18 crimes, and as the detenu in spite of registration of several crimes against him, is committing the very same offences, and as the ordinary laws under which he is being prosecuted are not sufficient to curb his illegal activities, respondent No. 1 having come to the conclusion that the activities of the detenu are prejudicial to the maintenance of public order, has passed the order of detention, which as confirmed by respondent No. 2, does not call for interference by this Court in writ petition. The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.