
(2017) 02 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30628 of 2016

Samshul Hasan

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Citation : (2017) 2 ALTcr1 119 : (2017) 1 AndhLDCriminal 821

Hon'ble Judges : Sri Suresh Kumar Kait and Sri U. Durga Prasad Rao, JJ.

Bench : Division Bench

Advocate : Sri Deepak Misra, Advocate, for the Petitioner; Advocate General (A.P.), for the Respondent

Final Decision : Disposed Off

Judgement

Sri Suresh Kumar Kait, J.—Vide the present petition, the petitioner seeks direction thereby quashing detention order dated 08-08-2016 passed by respondent No. 2, as confirmed by respondent No. 1 on 27-09-2016, and consequently, direct respondent No. 3 to forthwith release Hussain Bhai @ Hasan Bhai @ Badrul Hasan @ Delhi Gaddam Saheb @ Pappu (hereinafter referred to as "the detenu").

2. In the affidavit filed by the petitioner, who is the brother of the detenu, in support of the petition, it is stated that on 08-08-2016, respondent No. 2 vide Ref.C1/533/M/2016 passed an order of detention against the detenu under Sections 3 (1) and 3 (2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "the Act").

3. Sri L. Ravichander, learned senior counsel, appearing on behalf of the petitioner, submits that the detention order suffers from several legal infirmities and it is liable to be set aside. He submits that in the grounds of detention served on the detenu referred seven cases while passing the order of detention by the detaining authority. Reading of grounds of detention and perusal of

documents relied upon by the detaining authority would make it clear that the order of detention was passed mechanically without application of mind on vague, irrelevant and non-existing grounds and there is no material placed for subjective satisfaction of the detaining authority which has curtailed the fundamental rights of the detenu by placing him under preventive detention. The detaining authority arrived at a subjective satisfaction basing upon the seven crimes registered against the detenu on the ground that his activities are disturbing public peace and law and order problem as well. It is not in dispute that the detaining authority can invoke the provisions of the preventive detention to pass the order against the detenu if and only if the activities of the detenu are prejudicial to the maintenance of public order. However, Law and order problem cannot be taken care under the preventive law. The detaining authority traveled beyond the scope of the Act and passed the detention order referring to the material which cannot form part of the detention order under the Act.

4. In addition to the above, so many other grounds are raised in this Writ Petition. However, learned senior counsel has strongly argued that the mother tongue of the detenu is Hindi. He is not conversant with English and Telugu languages. He can only read and write in Hindi and sign in Hindi. The material papers served to the detenu show that the order of detention and the grounds of detention are served in English, Telugu and Hindi languages. Moreover, all the material papers relied upon supplied are in English and Telugu, however, not supplied in Hindi language. Learned senior counsel submits that there are number of mistakes in the detention order issued in Hindi when compared to the detention order in English language and they are not translated properly. The supporting material supplied along with grounds of detention are in English language and some of them are in Telugu language. The detenu is, accordingly, deprived of making effective representation against the detention order. Thus, the order of detention is liable to be set aside on this ground alone.

5. The present petition was listed before this Court on 01-02-2017 for hearing. Learned counsel for the respondents sought time to take instructions whether, as submitted by learned counsel for the petitioner, the documents are supplied in Hindi, known language of the detenu. Learned counsel submits that the detenu is fully conversant with English and Telugu. He married with a Telugu lady, that is why he can read and write Telugu. Thus, all the documents supplied are either in Hindi, English or Telugu.

6. This Court put a specific query to learned counsel for the respondents that if this is the position, the detention order originally was passed in English and if the detenu knows English well, then why they supplied translated copy of the detention order and grounds of detention in Hindi. It seems the respondents are aware that the detenu can read and write only in Hindi, neither English nor in Telugu. It is admitted by learned counsel for the respondents that the other documents which noted in the aforesaid para, except the documents of detention order and grounds of detention, the other documents are in English or in Telugu,

however not supplied in Hindi.

7. Learned counsel for the respondents failed to establish that the detenu knows English and Telugu languages. It is an admitted fact that the documents relied upon supplied to the detenu are either in English or in Telugu. In *Vasanthu Sumalatha v. State of Andhra Pradesh and others*, 2016 (2) ALD (CrL.) 156, a Division Bench of this Court held as under:

"Communication of the grounds of detention in English is not in compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him, and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is literate (*Rushikesh Tanaji Bhoite v. State of Maharashtra*, (2012) 2 SCC 72; and *State of Bombay v. Atma Ram Sridhar Vaidya*, AIR 1951 SC 157). The amplitude of the safeguard, embodied in Article 22 (5), extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu, but also to supplying their translation in a script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds, and of being afforded the opportunity of making a representation against the order (*Powanammal v. State of T.N.*, (1999) 2 SCC 413; *Hadibandhu Das v. District Magistrate, Cuttack*, AIR 1969 SC 43; and *A.C. Razia v. Government of Kerala*, (2004) 2 SCC 621).

The distinction between a document which has been relied upon by the detaining authority in the grounds of detention, and a document which finds a mere reference in the grounds of detention, should be maintained. Non-supply of a copy of the document relied upon in the grounds of detention is fatal to the continued detention, and the detenu need not show that prejudice was caused to him as non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. It would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of the document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language (*Powanammal*). As noted herein above, the documents furnished to the detenu in Telugu included copies of the confessional statements of the co-accused. These statements were relied upon by the detaining authority in making the order of detention. Failure to supply these documents, in a language known to him, resulted in the detenu being denied the opportunity of making an effective representation, and would

render his continued detention illegal."

8. The issue mentioned in the aforesaid judgment is not the issue decided for the first time by the Court in the year 2016. Time and again, the Apex Court and this Court reminding the respondents to supply the material relied upon to the detenu in the language known to him. However, even thereafter, repeated directions were passed to the respondents to comply with the statutory provisions and the dictums of the Courts. However, due to the reasons best known to them, the respondents are not bothering about the statutory provisions and the directions passed by the Courts. It seems either the respondents are careless or they want to help the detenu by passing such order in mechanical manner.

9. Without commenting much on the role of the respondents, who admittedly not supplied the relied upon documents in the language known to the detenu i.e. Hindi, we hereby quash the detention order dated 08-08-2016 passed by respondent No. 2 as confirmed by respondent No. 1 on 27-09-2016. Consequently, respondent No. 3 is directed to release the detenu forthwith if he is not required in connection with any other criminal case.

10. The Writ Petition is, accordingly, allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.