

(2017) 01 AP CK 0048
In the Andhra Pradesh High Court
Case No : W.P. No. 29887 of 2016

Srinivas @ Pap.

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Andhra Pradesh Prevention of Dangerous Activities Of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders And Land Grabbers Act, 1986 — Section 3

Citation : (2017) 1 ALTcr1 317

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

Bench : Division Bench

Advocate : Sri. M. Damodar Reddy, Advocate, for the Petitioner; G.P. for Home (TG), for the Respondents

Final Decision : Disposed Off

Judgement

Sri Suresh Kumar Kait, J.—Vide the present petition, petitioner seeks direction thereby quashing the impugned detention order dated 30th May 2016 vide Proceedings No.C3/2399/2016, whereby, the brother of the petitioner is detained under the provisions of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, which is confirmed by the 1st respondent vide G.O.Rt. No.1738, dated 06.08.2016, as illegal, unlawful and contrary to law and consequently direct the respondents to set free the brother of the petitioner from detention.

2. The petitioner is brother of Sri Santhosh Singh @ Santhosh @ Gunna Santhosh @ Gunna Pariwar Santhosh (hereinafter referred to as "detenu").

3. We have heard learned counsel for petitioner and learned Assistant Government Pleader for Home, appearing for respondents.

4. Learned counsel appearing on behalf of petitioner submits that as alleged in

the detention order dated 30.05.2016, the detenu was booked in five crimes, however, in three cases, the detenu was already acquitted, which is evident even from the detention order but the 3rd respondent has failed to place the order of acquittal in the above three cases before the 2nd respondent as to know under what circumstances the said three cases were not proved against the detenu and how the said cases are resulted in acquittal of the detenu.

5. Learned counsel further submits that except the crime occurrence reports and charge sheets pertaining to the past five cases and present two cases, no other material has been placed before the 2nd respondent to pass the impugned detention order. The 3rd respondent, based upon only present two crimes i.e. Crime No.85 of 2016 and Crime No.106 of 2016, passed the detention order. Had the 3rd respondent placed the orders of acquittal recorded by the criminal Courts in Crime Nos.169/2014-15, 1136/2014-15 and 341/2015-16 as mentioned in the grounds of detention, the 2nd respondent would have properly considered the circumstances under which the acquittal orders are passed by the competent criminal Courts and ought not to have passed the impugned detention order.

6. To strengthen the argument, learned counsel appearing on behalf of petitioner has cited the case of Gattu Kavitha v. The State of Telangana & others : 2016 (3) L.S. 246 (D.B), whereby, it is held that 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.

7. Reliance is also placed upon the case of I. Dhanalaxmi v. State of Telangana rep. by its Chief Secretary to Government, General Administration (L&O) Department & others : 2016 (2) ALT (CrI.) 315 (D.B)(A.P.), wherein, it is held;

"28. In Munagala Yadamma v. State of A.P., the Supreme Court held that the offences alleged to have been committed, by the appellant before the Supreme Court, were such as to attract punishment under the Andhra Pradesh Prohibition Act, but that had to be done under the said law; taking recourse to preventive detention laws was not warranted; Preventive detention involved detaining a person without trial in order to prevent him/her from committing certain types of offences; such detention could not be made a substitute for the ordinary law, and absolve investigating authorities of their normal functions of investigating crimes which the detenu may have committed; and preventive detention in most cases is for a year only, and cannot be used as an instrument to keep a person in perpetual custody without trial.

29. In K. Nageswara Naidu the Supreme Court, after noting that the Division bench of the Andhra Pradesh High Court had dismissed the writ petition, relying on the two -Judge Bench decision of the Supreme Court in G. Reddeiah v. Govt.

of A.P., observed that, when the decision was rendered by the Division Bench of the High Court, the decisions rendered in Yumman Ongbi Lembi Leima v. State of Manipur and Munagala Yadamma were not available, though the decision in Rekha 1 was; when the decision of the three -Judge Bench in Rekha 1 was available on the same issue, judicial discipline demanded that the Division Bench of the High Court should have followed the same; judicial discipline was one of the fundamental pillars on which the judicial edifice rests; and, if such discipline is eroded, the entire edifice would be affected.

30. While the submission urged on behalf of the petitioner that ordinary laws would have sufficed to act as an effective deterrent, and it was unnecessary to resort to preventive detention under Act 1 of 1986, cannot be said to be without merit, it is unnecessary for us to dwell on this aspect, as the order of detention must be set aside on the short ground that failure to furnish copies of the bail orders to the detenu, while he is in preventive custody, would vitiate the order of detention itself."

8. We have perused the detention order, whereby, satisfaction by the competent authority is recorded that the detenu is dangerous to the public health at large and if he is not prevented from such activities, he will be prejudice to the society and danger to health of public at large. On perusing the grounds of detention order, it is found that there are five cases registered against the detenu vide COR. Nos.60/2014-15, dated 18.04.2014, 169/2014- 15, dated 04.05.2014, 1136/2014-15, dated 22.11.2014, 341/2015-16 and 371/2015-16, dated 15.06.2015. It is also noted that in COR No.60/2014-15, dated 18.04.2014, the charge sheet is already filed and case is under trial vide C.C. No.596 of 2016. It is further noted that in COR. No.169/2014-15, dated 04.05.2014, the detenu was acquitted. In addition to above, it is also noted that in COR No.1136/2014-15, dated 22.11.2014, the detenu was acquitted and so is the position in COR No.341/2015-16. It is further noted that in COR No.371/2015-16, charge sheet is filed, however, case is yet to be numbered.

9. In the case of Vinod K. Chawla v. Union of India & others (2006) 7 SCC 337, it is held by the Supreme Court that the law does not require that every document or material in possession of sponsoring authority must necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority before the detaining authority, the formation of opinion and subjective satisfaction of the detaining authority would get vitiated.

10. In the present case, all the cases against the detenu were placed before the competent authority and same is evident from the grounds of detention. Had the sponsoring authority not placed the details of the cases mentioned above, there was no occasion before the detaining authority to mention in the order of detention about the acquittal of detenu in some cases and the stage of other cases. Therefore, we cannot find fault with the said order. The detenu is habitual offender committing one after another crime and is dangerous to the society and

his acts are dangerous to the public health at large. We find no merit in this writ petition and the same is accordingly dismissed. No costs.

11. Pending miscellaneous applications, if any, shall stand closed.