
(2012) 10 AP CK 0067
In the Andhra Pradesh High Court
Case No : Writ Petition No. 28654 of 2012

V. Muragesh

APPELLANT

Vs

The Collector and District Magistrate, Chittoor, Chittoor
District, and two others

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 378, 379

Citation : (2013) 1 ALD(Cri) 408 : (2013) 1 ALT 176 : (2013) CriLJ 585

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

Bench : Division Bench

Advocate : C. Masthan Naidu, for the Appellant;

Final Decision : Allowed

Judgement

Sri. N.V. Ramana, J.—The petitioner, who claims to be the son of the detenu, namely Vepagunta Nagaiah, who is now detained in Central Prison, Cherlapally, has filed this writ petition praying the Court to issue 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, Wild Life Management Division, Tiruputi, informed respondent No. 1, namely the Collector and District Magistrate, Chittoor (hereinafter referred to as "the Detaining Authority") that the detenu since last seven years has been committing forest offences, namely illicit felling of red sanders, smuggling them to secret and unknown places in India and abroad. He is involved in eight forest offences, namely in O.R. Nos. 177/2010-11, dated 14.02.2010; 126/2009-10, dated 26.02.2010; 217/2010-11, dated 31.03.2010 and 20/2012-13, dated 20.04.2012 of Flying Squad Division, Tirupati - O.R. Nos. 17/2011-12, dated 25.04.2010; 26/2011-12, dated 02.05.2011; 108/2011-12, dated 05.10.2011 and 249/2011-12, dated 24.03.2011 of S.V. National Park Range, Wild Life Management, Tirupati. The said cases were registered against the detenu 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. While the said cases are pending trial, considering the fact that the illegal activities of the detenu, is resulting in willful destruction of red sanders trees, which is an endangered species; damage to public property, resulting in depletion of green cover and loss of national wealth; 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 28.05.2012, ordered the detention of the detenu in prison. Pursuant to the said order of detention, the detenu was lodged in Central Prison, Cherlapally. The said order of detention, passed by respondent No. 1-Detaining Authority, was confirmed by respondent No. 2, namely the Government, by orders issued in G.O. Rt. No. 2950, General Administration (Law and Order - II) Department, dated 26.06.2012. 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 eight 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. Out of the said eight cases, he was arrested and released on bail in five cases, while in three cases, he has not been arrested. Respondent No. 1-Detaining Authority, in the order of detention, except stating that the detenu was arrested and released on bail in five cases, has not considered the bail applications filed by the detenu and the effect of the bail orders passed therein, because they were not placed before him by the Sponsoring Authority. Therefore, he contends that the order of detention suffers from subjective satisfaction of and non-application of mind by respondent No. 1-Detaining Authority. He further submitted that if one of the grounds of detention is found to be irrelevant, then the order of detention is liable to be set aside. 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 approved 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 sanders

trees by trespassing into forest area, smuggling and transporting them out of the reserved forest owned by the State. Further, his activities are dangerous to the rare species of red sanders; resulting in damage to the pristine forest wealth; prejudicial to the maintenance of public order. For such of his illegal activities, 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 eight 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 approved by respondent No. 2-the Government. Even though he admitted that the bail applications filed by the detenu and the bail orders granted to the detenu in the five cases were not placed before respondent No. 1-Detaining Authority, but contended that since respondent No. 1-Detaining Authority in the order of detention, had noted that the detenu was arrested in five cases and was released on bail, it cannot be said that he has passed the order of detention without application of mind or it suffers from his subjective satisfaction.

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 only issue that arises for consideration, in this writ petition:

1. 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 bail applications filed by the detenu and the bail orders granted there in, were not placed before the Detaining Authority?

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. The law is also equally well settled that if any of the grounds of detention is found to be irrelevant, which formed the basis for passing the order of detention, then the order of detention is liable to be quashed.

7. Therefore, we shall examine whether there was sufficient material placed before respondent No. 1-Detaining Authority, to satisfy for him that it was necessary to pass the order of detention against the detenu.

8. The detenu is involved in eight forest offences. The said eight forest offences, which formed the basis for respondent No. 1-Detaining Authority, to pass the order of detention against the detenu, are as follows:

9. As can be seen from the above table, respondent No. 1-Detaining Authority, as against O.R. No. 177/2010-11, dated 14.02.2010, Flying Squad Division, Tirupati, noted that the detenu is shown as accused No. 4 and that he has escaped from the scene of offence and in execution of PT warrant issued by IV Additional First Class Magistrate, Tirupati, he was arrested on 07.05.2012 and sent for remand and later was released on conditional bail on 15.05.2012. The order of detention, neither reflects the number of the bail application moved by the detenu nor the details of the conditional bail order dated 15.05.2012; As against O.R. No. 126/2009-10, dated 26.02.2010, Flying Squad Division, Tirupati, it is mentioned that the detenu, who is accused No. 1 was arrested on the spot along with three others on 26.10.2010 and was produced before the Additional Junior Civil Judge, Tirupati, who sent him for remand, and that charge sheet was filed before the II Additional Judicial First Class Magistrate, Tirupati. The order of detention does not reflect whether the detenu who was arrested was granted bail. Though it is the case of the petitioner that the detenu was enlarged on bail, but the order of detention, neither reflects the details of the bail application moved by the detenu nor the date of bail order nor the conditions of bail are mentioned. As against O.R. No. 217/2010-11, dated 31.03.2010, Flying Squad Division, Tirupati, it is mentioned that the detenu is accused No. 3 and that he escaped from the scene of offence, and that in pursuance of PT warrant issued by the IV Additional Junior Civil Judge, he was arrested on 07.05.2012 and sent for judicial remand and later released on conditional bail on 15.05.2012. The order of detention, does not reflect the number of the bail application moved by the detenu nor the details of the conditional bail granted to the detenu. As against O.R. No. 17/2011-12, dated 25.04.2010; 26/2011-12, dated 02.05.2011; and 249/2011-12, dated 24.03.2011, S.V. National Park Range, Wild Life Management Division, Tirupati, it is stated that the detenu is accused No. 4 and accused No. 2 respectively, and that he escaped from the scene of offence when the forest officials tried to apprehend him along with the case and that the cases are at the stage of investigation. As against O.R. No. 108/2011-12, dated 05.10.2011, S.V. National Park Range, Wild Life Management Division, Tirupati, it is stated that the detenu, who is accused No. 1 was arrested on 05.10.2011 and produced before the III Additional Munsif Magistrate, Tirupati and sent for remand. However, the order of detention does not reflect whether the detenu was released on bail. It is the case of the detenu that he was released on bail in the said case, but neither the details of the bail application moved by the detenu nor the bail order nor the conditions of bail granted to the detenu are reflected in the order of detention. As against O.R. No. 20/2012-12, dated 20.04.2012, Flying Squad Division, Tirupati, it is mentioned that the detenu, who is accused No. 2 was arrested on 19.04.2012 on the spot along with three others and produced before the III Additional Junior Civil Judge, who remanded him to judicial custody, and in the meantime, he was arrested in execution of PT warrants on 01.05.2012 and 07.05.2012 and was released on conditional bail on all the cases. However, the order does not reflect the details of the cases of the PT warrants in execution of which, the detenu was arrested, and

though it is mentioned that the detenu was released on bail in all the cases, it does not refer to the numbers of the bail applications moved by the detenu and the bail orders and the conditions on which the detenu was released on bail.

10. Thus from the above, it is evident that out of the eight forest offences registered against the detenu, he was arrested and released on bail in five cases, while in three cases, he was not even arrested. But curiously, in the order of detention, respondent No. 1-Detaining Authority has recorded that the detenu was released on bail in all the cases. This shows that respondent No. 1-Detaining Authority, has not applied his mind to the facts of the case. Respondent No. 1-Detaining Authority, did not even bother to refer to the details of the bail applications moved by the detenu, nor the details of the bail orders nor the conditions on which bail was granted to the detenu. Obviously, he could not have recorded the details of the bail applications moved by the detenu and the bail orders granted and the conditions on which the bail was granted, because it is the admitted case of the learned Assistant Government Pleader representing the respondents that they were not placed before respondent No. 1-Detaining Authority. In *State of U.P. Vs. Kamal Kishore Saini*, , the Apex Court held that it is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatorily required under the Act. In *M. Ahamedkutty Vs. Union of India (UOI)* and *Another*, the Apex Court held bail application and bail order were vital materials for consideration and if those were not considered the satisfaction of the detaining authority itself would have been impaired.

11. There is no doubt that the offences in which the detenu is said to be involved are serious in nature, but it is unfortunate to note that the Sponsoring Authority has not placed the relevant materials, particularly the bail applications moved by the detenu and the bail orders granted and the conditions on which bail was granted, before respondent No. 1-Detaining Authority, to enable him to arrive at subjective satisfaction. Inasmuch as the bail applications and the bail orders, which are vital documents, were not placed by the Sponsoring Authority before respondent No. 1-Detaining Authority, to arrive at subjective satisfaction whether or not to pass order of detention under the Preventive Detention Law, and having regard to the settled law that if one of the grounds of detention, which formed the basis for passing the order of detention, is found to be bad, the order of detention is liable to be set aside, 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, cannot be sustained and is liable to be set aside. In the result, the writ petition is allowed. Consequently, the order of detention dated 28.05.2012, passed by respondent No. 1-Detaining Authority, as confirmed by respondent No. 2-Government by orders issued in G.O. Rt. No. 2950, dated 26.06.2012, is set aside. The detenu shall be released forthwith if he is not required in any other case. No costs.