

(2016) 07 AP CK 0024

Andhra Pradesh High Court

Case No: Writ Petition No. 1187 of 2016

Smt. B. Manjula

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision: July 5, 2016

Acts Referred:

- Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 - Section 2
- Constitution of India, 1950 - Article 22(4), Article 226

Citation: (2017) 1 ALTCrI 41 : (2017) 1 AndhLDCriminal 218 : (2016) CrI LJ 5068 : (2017) 1 HLT(CrI) 337

Hon'ble Judges: Sri C.V. Nagarjuna Reddy and Sri G. Shyam Prasad, JJ.

Bench: Division Bench

Advocate: Mr. P. Prabhakar Reddy, Advocate, for the Petitioner; G.P. for Home (TS), for the Respondents

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sri C.V. Nagarjuna Reddy, J. - This Writ Petition is filed for issue of Habeas Corpus to set one Tandra Hema @ Shailu @ Rani @ Bujji @ Akekhyia Reddy @ Hemalatha (hereinafter referred to as the detenue), D/o Tandra Chandramouli Reddy @ Chendra Mohan Reddy, at liberty by quashing G.O.Rt. No.7 dated 05.01.2016 of respondent No.1 confirming the detention order in SB (1) No.535/PD/S-1/2015, dated 07.10.2015, of respondent No. 2.

2. We have heard Mr. P.Prabhakar Reddy, learned counsel for the detenue, and the learned Government Pleader for Home (T.S) in detail and perused the record.

3. By the impugned detention order, respondent No.2 has stated that the detenue has been habitually indulging in cheating cases, that as many as six criminal cases were registered against her since 2012 and that having regard to the nature of her activities, she falls within the definition of "Goonda" under Section 2 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for short "the Act"). Respondent No.2 has further stated that it was brought to his notice that the detenue was arrested on 14.08.2015 in Crime No.495/2015 of S.R. Nagar Police Station and remanded to judicial custody, that she is still in judicial custody in connection with the said crime and that there is a genuine possibility of her release on bail and further on being released, she would further indulge in activities which are prejudicial to the public order. In the grounds of detention served on the detenue, details of five criminal cases, namely, Crime No. 24 of 2015 registered for the offences under Sections 460, 420 and 506 IPC on the file of S.R. Nagar Police Station, Crime No.93 of 2015 registered for the offences under Sections 417, 419 and 420 IPC of Sanathnagar Police Station, Crime No.140 of 2015 registered for the offences under Sections 406 and 420 IPC of Jubilee Hills Police Station, Crime No.145 of 2015 registered for the offences under Sections 406 and 420 IPC of Jubilee Hills Police Station and Crime No.495 of 2015 registered for the offence under Section 420 IPC of S.R. Nagar Police Station, were mentioned. It is further stated in the grounds as under:

"I am aware that you were arrested on 14.08.2015 in Cr. No. 495/2015 of SR Nagar PS and remanded to judicial custody. You are still in judicial custody in Cr. No. 495/2015 of SR Nagar PS. I believe that there is a genuine possibility of your release on bail and further on being released you would further indulge in the similar activities which are prejudicial to maintenance of public order."

4. The State Advisory Board has considered the detention order on 24.11.2015 and made its recommendation for continuing the detenue's detention vide its report dated 26.11.2015. Within the period of three months stipulated under Article 22 (4) of the Constitution of India, respondent No.1 has confirmed the detention order vide G.O. Rt. No. 7 dated 05.01.2016. Assailing all these proceedings, the petitioner, who claims to be the cousin of the detenue, filed this writ petition.

5. The foremost submission made by the learned counsel for the petitioner for invalidating the detention order is that, there was undue delay in considering the detenue's representation. In support of his submission, learned counsel placed reliance on the judgments in

K.M. Abdulla Kunhi v. Union of India (1991) 1 SCC 476,

Rajammal v. State of Tamil Nadu, (1999) 1 SCC 417,

Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618, and

D.M. Nagaraja v. Govt. of Karnataka, (2011) 10 SCC 215.

6. The learned counsel further argued that in the grounds of detention, respondent No. 2 has taken note of wrong dates on which the detainee was produced before the jurisdictional Magistrates under P.T. warrants in different cases and that it shows the complete non-application of mind on the part of respondent No.2, and that as relevant details of the criminal cases have not been taken into account while passing the impugned detention order, the same is liable to be set aside. In support of his submission, the learned counsel has relied upon the judgment in

Rekha v. State of T.N., (2011) 5 SCC 244.

7. Lastly the learned counsel submitted that the order of detention is liable to be set aside for the reason that the detainee was in judicial custody as on the date of detention and that, therefore, the satisfaction of the detaining authority that there is a likelihood of the detainee continuing her activities which may disturb the public order, has no basis.

8. Opposing the above submissions, the learned Government Pleader for Home (TS) submitted that the Constitutional safeguards provided to the detainee under Article 22 of the Constitution of India have been scrupulously followed, that within three months of the detention of the detainee, the detention order was confirmed by respondent No.1 and that immediately on the same day on which the detention order was confirmed, the detainee's representation, which was pending with respondent No. 1, was considered and rejected without there being any delay.

9. He has further submitted that as held by the Constitution Bench in K.M. Abdulla Kunhi (1 supra), there is no constitutional obligation on the part of the detaining authority to consider the representation of the detainee before the detention order was confirmed and that as the representation of the detainee was considered and rejected on the same day on which the detention order was confirmed, there is no delay as pleaded by the detainee. As regards the judgment in Rekha (5 supra), the learned Government Pleader submitted that the said judgment was distinguished on facts in D.M. Nagaraja (4 supra) and that for the same reasons on which the Supreme Court distinguished D.M. Nagaraja (4 supra) from Rekha (5 supra), the latter judgment has no application to the facts of the present case. He also submitted that subsisting custody of the detainee by itself does not invalidate an order of her preventive detention and the decision must depend on the facts of the particular case.

10. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record. As regards the first submission of the learned counsel for the petitioner, a Constitution Bench of the Supreme Court in K.M. Abdulla Kunhi (1 supra), framed the following question for consideration:

"The crucial question that remains for consideration is whether the Government should consider and dispose of the representation before confirming the detention."

11. The Constitution Bench has taken note of the earlier judgment in **V.J. Jain v. Shri Pradhan, (1979) 4 SCC 401**, wherein it was held that it is a constitutional obligation under Clause (5) of Article 22 to consider the representation before confirming the order of detention and, while holding that the said judgment has not laid down correct proposition, it has held as under:

"There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. As long as the Government without delay considers the representation with an unbiased mind there is no basis for concluding that the absence of independent consideration is the obvious result if the representation is not considered before the confirmation of detention. Indeed, there is no justification for imposing this restriction on the power of the government. As observed earlier, the government's consideration of the representation is for a different purpose, namely, to find out whether the detention is in conformity with the power under the statute. This has been explained in **Haradhan Saha, (1975) 3 SCC 198** case, where Ray, C.J., speaking for the Constitution Bench observed that the consideration of the representation by the Government is only to ascertain whether the detention order is in conformity with the power under the law. There need not be a speaking order in disposing of such representation.

There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be real and proper consideration by the government."

(Emphasis is ours)

12. In D.M. Nagaraja (4 supra), the Supreme Court, while dealing with similar issue referred to and relied upon the judgment of the Constitution Bench in K.M. Abdulla Kunhi (1 supra) and held as under:

"There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and as such, the contention raised by the appellant as if there was delay in consideration, is baseless and liable to be rejected.

As pointed out above, the counsel for the appellant did not raise any objection as regards to the same."

13. From the above-mentioned authoritative judicial pronouncements, the law is well settled that a detenu has no constitutional right to insist that his representation must be considered before confirming the detention order. The outer time limit prescribed for such confirmation is three months from the date of order of

detention under Article 22 (4) of the Constitution of India. Therefore, if a detention order was confirmed within the outer time limit prescribed by the Constitution and the representation against the detention is considered within a reasonable time of confirmation of the detention order, the requirement under Article 22 stands satisfied and the detention order cannot be interfered on the ground of delay in considering the representation of the detenu.

14. In K.M. Abdulla Kunhi (1 supra), Rajammal (2 supra), Pebam Ningol Mikoi Devi (3 supra), and D.M. Nagaraja (4 supra), on which reliance is placed by the learned counsel for the petitioner, the Supreme Court has set aside the detention on the facts arising in the respective cases and held that the respective Governments failed to consider the representations within a reasonable time and that proper explanation was not given for the delay. These judgments have no application to the instant case, having regard to the fact that on the very same day on which the detention order was confirmed by respondent No.1, the representation of the detainee was rejected. Therefore, on facts, the judgments on which reliance has been placed by the learned counsel for the petitioner are distinguishable and they do not in any manner help the detainee.

15. Apropos the second noted submission of the learned counsel for the petitioner, no doubt there appears to be some discrepancy between the actual dates on which the detainee was produced before the jurisdictional Magistrates on P.T. warrants and those mentioned in the detention order. In our opinion, these discrepancies are not material. Even if the true dates of production of the detainee on P.T. warrants were in the knowledge of the detaining authority, there would not have been any change in his satisfaction, as what was material for detention of a detenu was the satisfaction of the detaining authority that the alleged activities of the detenu are prejudicial to the public order and if the detenu is in judicial custody as on the date of passing of the detention order, the detaining authority must have the awareness of the said fact and he must also be further satisfied that there is a likelihood of the detenu coming out on bail and repeating his/her activities which are prejudicial to the public order.

16. A perusal of the detention order as well as the grounds of detention would clearly show that respondent No.2 has given relevant details of each of the criminal cases in which the detainee figures as accused, the fact that she was remanded to judicial custody in connection with Crime No.495 of 2015 of S.R. Nagar Police Station on 14.08.2015, her continuance in judicial custody and therefore it cannot be said that the impugned order of detention was passed without considering the relevant details.

17. In **N. Meera Rani v. Government of Tamil Nadu, (1989) 4 SCC 418**, a similar contention regarding mentioning of incorrect date of arrest of detenu in criminal case was raised, that the detenu's arrest in connection with the Bank dacoity case is shown as August 21, 1988 when he was actually arrested much earlier in connection

with the Bank dacoity as appeared in some local newspapers, but those newspaper reports are not shown to have been placed before the detaining authority and hence the satisfaction reached by the detaining authority had been vitiated. The Supreme Court has considered the said contention and rejected the same by observing that the newspaper reports indicating that the detenu was already in custody could at best be relevant only to show the fact that he was already in detention prior to the making of the detention order, that those reports were not relevant for the satisfaction needed to justify making of the detention order and that the detaining authority's satisfaction was to be formed on the basis of the material relevant to show the detenu's activities requiring his preventive detention with a view to prevent him from acting in a manner prejudicial to the maintenance of the public order.

18. In the light of the above legal position, the submission of the learned counsel for the petitioner that mentioning of wrong dates on which the detenu was produced under P.T warrants vitiates the detention order, is wholly without any merit.

19. As regards the alleged non-mentioning of relevant details of the criminal cases in the detention order, we may refer to paragraph 7 of the judgment in *Rekha* (5 supra), on which reliance has been placed by the learned counsel for the petitioner, which reads as under:

"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 court concerned.

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. In our opinion, this itself is sufficient to vitiate the detention order."

20. Referring to the above-reproduced portion of the judgment, the Supreme Court, in *D.M. Nagaraja* (4 supra), distinguished the above noted judgment as under:

"In the same judgment in *Rekha* (5 supra), this Court has extracted the detention order and the grounds for detaining him under the Tamil Nadu Act, 1982. The grounds show that there is reference to one incident relating to selling expired drugs and the detaining authority by pointing out that necessary steps are being taken by his relatives to take him out on bail and since in similar cases, bails were granted by the courts after lapse of some time and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public health and order and recourse to normal criminal law would not have the desired

effect of effectively preventing him from indulging in such activities, on the materials placed and after fully satisfying, the detaining authority has passed an order under the Tamil Nadu Act, 1982.

In para 7, the Bench has pointed out that in the grounds of detention, no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. The grounds extracted therein also are bereft of any further details. In those circumstances, this Court taking note of various earlier decisions came to the conclusion that normal recourse to ordinary law would be sufficient and there is no need for invocation of the special Act."

21. Indeed from the reading of the grounds of the detention in the instant case, we are satisfied that, as in the case of D.M. Nagaraja (4 supra), all the relevant details relating to each of the offences in which the detenu is involved have been given out in the grounds of detention. Therefore, the judgment in Rekha (5 supra) does not in any manner come to the aid of the detenu.

22. Coming to the last submission, respondent No. 2 has also clearly stated in the detention order as well as in the grounds of detention that there is a genuine possibility of her release on bail and on being released, she would further indulge in similar activities which are prejudicial to the maintenance of public order.

23. In N. Meera Rani (8 supra), the Supreme Court summarised the settled legal principle in this regard as under:

"Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position."

24. Having regard to the various alleged criminal activities of the detenu, respondent No.2 has arrived at the satisfaction that her said activities would cause prejudice to the public order. Satisfaction of respondent No.2 being subjective in nature, this Court would not sit in appeal there on. As we do not find any constitutional or procedural violations in the impugned detention orders, they are not liable for interference.

25. For the above-mentioned reasons, the Writ Petition fails and the same is, accordingly, dismissed.

26. As a sequel to dismissal of the writ petition, WPMP. No. 24311 of 2016 is disposed of as infructuous.