

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

and

HON'BLE SRI JUSTICE V. SRINIVAS

WRIT PETITION No.36291 of 2022

ORDER: *(per D.V.S.S.Somayajulu, J)*

This Writ Petition is filed for the following relief:

“...to issue a Writ of Habeas Corpus directing the Respondents herein to produce my brother / Detenu M.Perumal, S/o Murugesan, aged 33 years, R/o Thandavarayan Street, Kosapalayam, Arani, Tiruvannamalai, Tamil Nadu before this Hon'ble Court and he may be set at liberty / ordered to be released forthwith by declaring the order of Detention passed by the 2nd respondent vide REV-CSECOPDL(PRC)/19/2022-D.TH(C7) as approved by the 1st respondent in G.O.Rt.No.1920, Dt:13.09.2022 as illegal, arbitrary and colorable excise of power and violative of Article 14 and 21 of the Constitution of India and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2) This Court has heard Sri Kalyan C.R., learned counsel for the petitioner and Sri Sayed Khadar Masthan, learned counsel representing learned Additional Advocate General appearing for the respondents.

3) The detenu in this case is a person, who is accused of offences under the Forest Act and in particular of offences involving smuggling of Red Sandalwood. It is stated that in view of his activities and as he is an accused in various crimes, which are serious in nature, he was classified as Goonda and placed under Prohibition of Detention. By virtue of the detention order and the confirmation orders, which are assailed in this Writ Petition.

4) Sri C.R. Kalyan, learned counsel for the petitioner submits that the detention order was passed when the detenu was in judicial custody. It is argued that when a person is in judicial custody the authority should record his / her satisfaction before passing an order of detention that there is an imminent possibility of the detenu being released on bail and that he would commit another offence or a series of offences which would affect public good, public safety etc. It is submitted that in all most all the cases the detenu even did not make bail application and a reading of the order of detention would show that the accused was in judicial remand and was

produced on PT warrant in most of the other cases. Thereafter, it is submitted that since he was admittedly in custody and is being produced on PT Warrant, the necessary finding that there is a likelihood of the detenu would commit further offence is not mentioned anywhere in the order. He argues that mechanically reasons were recorded. It is submitted that the penal laws are enough to deal with the alleged offence and there is no need or necessity to detain the accused under the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short “Act No.1 of 1986”). Learned counsel also submits that the Hon’ble Supreme Court of India in the case of ***Rajesh Gulati v Government of N.C.T. of Delhi and Ors.***,¹ considered the similar situation and quashed the detention order because the likelihood of another crime being committed is not mentioned. He also relies upon the decision of the Division Bench reported in ***Rishi Kumar Bhaskaran v The State of Andhra***

¹ AIR 2002 SC 3094

Pradesh², wherein a Division Bench of this Court considered similar contentions and particularly relied upon **Kamarunnisa v Union of India³** case wherein a threefold test was enunciated when an accused is in custody. He, therefore, submits that this is a fit case in which this Court should exercise its jurisdiction.

5) In reply to this learned counsel appearing for the respondents argued the matter at length. He points out that the detenu in this case is accused of serious offences under the Forest Act and that he is a red sandalwood smuggler. It is also argued that series of the offences make it a special case. It is also pointed out that the detenu/accused is regularly entering the Reserve Forest, cutting the trees, illegally transporting and smuggling the same and also assaulting the officials who are pursuing the matter. The number of cases registered against him are highlighted and the seriousness of the offences are also highlighted by the learned counsel. In addition, it is also pointed out, the cases are registered

² MANU/AP/0694/2021

³ (1991) 1 SCC 128

under the Biological Diversity Act and various other Acts since the petitioner's activity amounts to a crime against the society, against the environment also. He points out that Part-B of the order clearly considered all these aspects, including the judgments of the various Courts, before coming to conclusion that the petitioner is to be placed in Preventive Detention. He relies upon the judgment of the Constitution Bench in ***Hardhan Saha and Ors., v State of West Bengal and Ors.***⁴, wherein it is held that an order of detention need not be postponed and may be passed in certain circumstances. He points out that mere fact that the accused is likely to commit an offence and be tried under the regular laws is not an issue by itself to debar the Government from taking action of preventive detention. The mere pendency of prosecution will not be a ground to violate the detention order.

6) Lastly, it is contended that the order of detention is a precautionary measure based upon a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding

⁴ (1975) 3 SCC 198 = Manu/SC/0419/1974

circumstances. It is argued that the surrounding circumstances in this case are clear. The series of offences of which he is accused is ground enough to pass the order of detention.

COURT:

7) This Court has carefully considered the submissions. It is no doubt true that the offences of which the detenu is accused are serious in nature. It is true that red sandalwood smuggling is a serious problem confronting the State of Andhra Pradesh and has lead to wide spread crime. It is also cannot be disputed that there are number of cases registered against the accused. The case law cited by the learned counsel for the respondent is also clear and an order of detention is essentially a precautionary measure based upon a prognosis of a future of the behavior of the detenu.

8) The question is whether in the light of the case law cited by the counsel for the petitioner the order can be sustained or not. The law is also very clear even if one of the grounds on which the detention order is passed is considered insufficient or irrelevant, the whole of the order

has to go. The law need not be repeated again and again. The detenu / accused in the case decided by the Division Bench of this Court in **Rishi Kumar Bhaskaran case (2 supra)** was also a person accused of transportation of red sandalwood etc. In this case the triple requirement test laid down in the case of **Kamarunnisa case (3 supra)** was considered by the Division Bench of this Court. It was held *“an order of detention can be validly passed against a person in custody (1) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. This court notices that the order of detention did not meet this triple test and that there is no material”*. It also noted that the detaining authority did not discuss on the basis of available material that there is a real possibility of the detenu released on bail and that there is a real possibility that on release he would commit similar offences which are prejudicial to the State at large. To the same effect is the judgment in the case of **Rajesh Gulati (1**

supra). The law is, therefore, very clear if the accused is in custody and the authority wants to pass an order of detention under Act 1 of 1986 etc., he must record a clear and categorical finding based upon material that even if the accused is released on bail there is a clear likelihood of his committing similar offences. In the case on hand, in the concluding part of the order, the Collector and District Magistrate clearly stated that there is every likelihood of him being granted/released on bail in other cases also. Other than this there is no reference to the satisfaction of a future crime being committed based upon his past record. This order, therefore, runs foul of the case law that has been laid down by the Hon'ble Supreme Court of India and the Division Bench of this Court. In fact it is asserted that in almost all cases the detenu did not even make / file a bail application (Ground-b). This fact of not filing any bail applications is not effectively answered. If he did not file a bail application the chance of his being released are almost zero. On this ground also the "preventive detention" must be held to be bad. In such cases there must be "compelling reasons" to conclude that the order of detention is still

necessary even though he is already in custody.

(*Dharmendra S. Chelawat v Union of India*⁵).

9) Last but not the least, this Court also notices that the counter goes on to state that he is engaging local villagers to cut the red sandalwood and luring the poor local villagers with high cost for felling and transport of red sander wood logs illegally. The local villagers, particularly the youth are, thus, getting lured into the smuggling activity. However, a reading of the detention order and in particular list of the accused in all the cases would show that there is hardly any person from the State of Andhra Pradesh that is arrayed as a co-accused along with the detenu. This plea is also doubtful. The element of disturbance of public order is also not visible as required under Section 2 (a) and the explanation of Act 1 of 1986.

10) In the light of the above, while the offences against the detenu are serious in view of the law laid down, this Court has to hold that the triple test in the case of ***Kamarunnisa case (3 supra)*** and the other cases are directly applicable. The accused was in judicial remand

⁵ (1990) 1 SCC 746

and is being produced under PT warrant, yet the satisfaction necessary in view of the triple test is not recorded in this case. Therefore, this Court has to hold that the Writ Petition is to be allowed.

11) Accordingly, the Writ Petition is allowed. Consequently the detention order dated 19.07.2022 and the confirmation orders vide G.O.Rt.No.1920, dated 13.09.2022, are set aside. There shall be no order as to costs. The detenu shall be released immediately if he is not wanted in any other cases.

12) Consequently, Miscellaneous Applications pending in this Writ Petition, if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

V. SRINIVAS, J

Date:20.03.2023

Note: Issue CC in 1 day.

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