

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

ON THE 31ST DAY OF JULY 2014

BEFORE

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

WRIT PETITION (HC). NO.107 OF 2014

BETWEEN:

Smt.Manjula
W/o Nagaraj
Aged about 30 years
Residing at No.4207,
Dore Swamy Naidu Compound,
1st Main, Subramanya Nagar,
Bangalore – 560 098.

...PETITIONER

(By Sri M.P.Vishwanath, Advocate)

AND:

1. The State of Karnataka
By its Secretary
Home Department
Vidhana Soudha,

Bangalore – 560 001.

2. The District Magistrate and
Deputy Commissioner,
Shimoga District,
Shimoga – 577 201.
3. The Jailor, Central Prison
Belgaum District,
Belgaum – 591 266.
4. The Superintendent of Police
Shimoga District,
Shimoga – 577 201.
...RESPONDENTS

(By Sri E.S.Indiresh, HCGP)

This WP(HC) is filed under Article 226 and 227 of the Constitution of India praying to issue a Writ in the nature of Habeas Corpus by quashing of the order of detention dated 10.02.2014 passed by the Respondent No.2 in No.MAG(1) CR/31475/2013-14 produced as Annexure-A and A1,; to issue a Writ in the nature of Habeas Corpus by quashing the confirmation order of the detention dated 17.02.2014 by the respondent No.1 in HD.63 SST 2014 produced as Annexure-B; to issue a writ in the nature of Habeas Corpus by quashing the confirmation order of the detention dated 28.03.2014 by the respondent No.1 in HD.63 SST 2014 produced as

Annexure-C and also to issue a Writ of direction directing the respondent No.3 to release the detenue Nagaraja @ Shankarnag@ Spot Naga S/o Honnaiah Forthwith.

This WP(HC) coming on for orders this day, Ravi Malimath J., made the following:-

ORDER

The petitioner is the wife of the detenue Nagaraja @ Shankarnag @ Spot Naga S/o Honnaiah. He is detained under the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985. The order was passed in terms of annexure-A dated 10-2-2014 in exercise of the powers conferred under Sub-Section (2) of Section 3 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 and to detain

him in Central Prison and the grounds of detention was also furnished to him. Under these circumstances, the present petition is filed.

2. The learned counsel for the petitioner contends that in terms of the Article 22 (5) of the Constitution of India there was no opportunity for him to make an appropriate representation to the detaining authority. He places reliance on the grounds of detention dated 10-02-2014.

3. We have examined the grounds of detention. It has been stated as follows:-

" If you desire to make any representation against the said order of detention to the Government of Karnataka, you may do so and address it to the undersigned and forward the same through the Senior Superintendent, Central Prison, Belgaum."

4. On hearing the learned counsels, we are of the considered view that an appropriate relief requires to be granted. In the grounds of detention made over to the petitioner, there is no opportunity given to him to enable him to make a representation to the detaining authority. Under these circumstances, the right guaranteed to him under Article 22(5) of the Constitution of India is infringed. Failure to inform the detainee that he could make a representation to the detaining authority, is fatal. Under these circumstances, on this ground alone, we are of the considered view that the detention of the detainee is illegal. This view is also supported by the decision of the Hon'ble Supreme Court in the case of STATE OF MAHARAHSTRA & OTHERS Vs. SANTOSH SHANKAR ACHARYA reported in A.I.R. 2000 SC 2504.

Under these circumstances, the Petition is allowed. The order of detention is quashed. The respondents are directed to set forth the petitioner's

husband namely, the detenue Nagaraja @ Shankarnag
@ Spot Naga, Son of Honnaiah forthwith, if not required
in any other cases.

Sd/-
JUDGE

Sd/-
JUDGE

Rsk/-