

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

AND

HON'BLE SRI JUSTICE B. KRISHNA MOHAN

WRIT PETITION No.10283 of 2020

ORDER: *(per Sri DVSS Somayajulu, J)*

This Writ Petition is filed seeking the following relief:

“....to issue writ order or direction more particularly one in the nature of Writ of Habeas Corpus under Article 226 of the Constitution of India directing the 4th respondent to produce Vadde Nanda Kishore @ Nanda, S/o V. Hanumanthu, who is now detained in Central Prison, Kadapa, YSR District before this Hon'ble Court and he may be ordered to be released forthwith after declaring his detention vide proceedings dt.09.03.2020 vide Rc.No.MC1/889/2020, the Collector and District Magistrate, Anantapuramu was confirmed by the 1st respondent vide G.O. Rt.No.763, General Administration (SC.I) Dept., dt.01.05.2020 as illegal and un constitutional and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The petitioner before this Court is a wife of the detainee. It is her contention that the detention order passed against the detainee on 09.03.2020 is totally vitiated and that it is absolutely contrary to law.

Learned counsel for the petitioner Sri D.Purna Chandra Reddy, submits that among the various grounds raised by him seeking a Habeas Corpus, the most important ground urged is

that there is non-application of mind before passing an order of such wide ramification. It is his contention that as on the date of the Order dated 09.03.2020, the detainee is already in judicial custody. In view of the settled law on the subject, which prescribes the three major conditions must be satisfied he questions the manner and the method in which the order was passed. As a reply affidavit to the counter affidavit filed by the respondent the case law has been filed with Unique ID No.18245. In reply to the counter affidavit, relying upon the case law that has been annexed thereto, learned counsel for the petitioner argues that the three essential conditions, which have to be satisfied for passing an order of preventive detention when the detainee was in judicial custody, are not at all fulfilled. He points out that the Hon'ble Supreme Court of India on more than one occasion has reiterated this legal position and that the combined High Court for the States of Telangana and Andhra Pradesh has also followed this legal position. He points out that ground No.1 of his Writ Petition itself talks about the failure of the detaining authority to look into these issues before the order is passed. Learned counsel also raised other issues including the classification of the petitioner as a Goonda. He states that the documents were also not served on him and that on the various grounds which are urged the petitioner is entitled to a

writ in the nature of Habeas Corpus.

On behalf of the respondents-State, Sri Ponnayolu Sudhakar Reddy, learned Additional Advocate General is present. He points out that the detainee is a chronic offender and in a number of cases he is a prime accused. He also states that the offences committed by the detainee are heinous crimes and that therefore the order of preventive detention is absolutely necessary. Learned counsel submits that if such a serious serial offender is released there will be a threat to the public tranquility itself. He submits that when individual liberty and public tranquility come into clash, it is the public tranquility that has to weigh with this Court. He therefore argues that the order of detention is necessary in this case for the greater good of the public. He also points out that the procedure prescribed for the preventive detention has to be scrupulously followed and the Government has also issued G.O. Rt.No.763, dated 01.05.2020 confirming the order. He also points out that the Board has also not found any reason to differ with the order. For all these reasons, learned Additional Advocate General submits that the petitioner is a serious offender, the impugned order that has been passed has to be upheld and the writ of Habeas Corpus cannot be allowed.

Apart from all the issues raised this Court finds that the

main issue that is raised is about the satisfaction to be recorded by the authority. Learned counsel for the petitioner drew the attention of this Court to paragraphs 9 and 10 of the judgment reported in **Champion R. Sangma v State of Meghalaya** wherein it was held as follows:

“9. Coming to the ground on which we intend to allow this appeal, we may point out that even if the appellant is in jail in connection with some criminal case(s) there is no prohibition in law to pass the detention order. Law on this aspect is well settled and stands crystallised by a plethora of judgments of this Court. However, a reading of those very judgments also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order.

10. There are three such factors which were restated in **Kamarunnissa v Union of India** (SCC pp.140-41, Para 13)

“13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) 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. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in **Ramesh Yadav** was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.”*

He points out that in the subsequent paragraphs the Hon’ble Supreme Court of India clearly held that it is for the authority to satisfy whether the triple requirements are actually present or not. He also relies upon the Division Bench judgments of the High Court of A.P. in W.P.Nos.27836 of 2018 and 20656 of 2018. He points out that in W.P.No.20656 of 2018 only one of the three conditions were satisfied, but as the other

conditions were not satisfied the Division Bench has granted the order as prayed for.

If the impugned order is examined against the backdrop of the law relied upon by the learned counsel for the petitioner it is clear that the impugned order does not record–

- that the authority passing the order is aware of the fact that the detenue was in judicial custody.
- that the authority had the necessary material to come to the conclusion that there is a possibility of the detenue being released on bail and that he would thereafter likely to indulge in criminal activity; and
- that it is essential to detain the detenue to prevent further crime.

In the opinion of this Court, the order has to be examined in the light of the settled law. If it is so examined, it is clear that the order in this case fails to meet the tests that are laid down. The deprivation of liberty is a matter of great ramifications and therefore before any such order is passed there should be material available and there should also be a clear conclusion arrived at based upon the material for the three points, which are highlighted by the Hon'ble Supreme Court of India. In this case as mentioned earlier the impugned order does not satisfy

the requirement of law and does not categorically record the three reasons that are necessary.

Since the order in this case suffers from a flaw which is *ex facie* visible and which is not curable, this Court is of the opinion that the Writ Petition has to be allowed. The impugned order of detention order dated 09.03.2020 is therefore set aside. Consequential G.O. Rt.No.763, General Administration (SC.I) Dept., dated 01.05.2020, is also set aside. The detenue shall immediately be released from the jail.

With the above observations, this Writ Petition is allowed. In the circumstances, there shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

B. KRISHNA MOHAN, J

Date:31.07.2020.

Note: Issue CC in 1 day

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