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Court : Karnataka Gulbarga

Decided On : Jul-23-2014

Judge : B.S. Patil &Amp; Anand Byrareddy

Appeal No. : WPHC No. 200008 of 2014

Appellant : Mallikarjun and Another

Respondent : The State of Karnataka by its Additional Secretary and Another

Judgement :

(Prayer: This Writ Petition is filed Under Articles 226 and 227 of the Constitution of India praying to issue a writ in the nature of certiorari, quashing the order dated 01.03.2014 in (Language) and the order dated 11.04.2014 bearing No.H.D.141 SST 2014 passed by the 2nd and 1st respondent respectively, produced as Annexures-A and E respectively and set free Teek Raj from illegal detention at Raichur District Prison immediately.)

1. Parents of Teek Raj have filed this petition seeking a writ of habeas corpus alleging that on false allegations, due to political rivalry and also on account of instigation of persons who were inimical to their son, Teek Raj has been illegally detained by the respondents.

2. The Deputy Commissioner and District Magistrate, Raichur, has passed the detention order dated 01.03.2014 exercising his power under the provisions of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug- offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slub-Grabbers Act, 1985, (for short 'the Act') on the basis of allegations that he was involved in as many as 16 criminal cases and was engaging himself in activities which were detrimental to the peace in the area and that he had become a serious threat for maintaining law and order. Allegations made against the detenu were regarding his involvement in gambling, matka activities and terrorizing people in the area, thereby, disturbing public peace. The order of detention was passed on 01.03.2010. The said order was approved by the State Government on 10.03.2014. The matter was sent for the opinion of the Advisory Board and after approval of the Advisory Board and upon the request made by the Deputy Commissioner, the detention order was confirmed for a period of twelve months vide order dated 11.04.2014. Petitioner had made a representation on 06.03.2014 requesting to release him inter alia stating that he had been acquitted in 14 out of the 16 cases and was enlarged on bail in the other two cases. The said representation was rejected by the police by issuing endorsement dated 15.04.2014. In this background, petitioners have approached this Court challenging the order of detention.

3. It is urged by the learned counsel for the petitioners that there is absolutely no reason to keep the detenu in custody on the basis of allegations made and the grounds stated in the order of detention, particularly because the detenu was acquitted in 14 cases and in the remaining 2 cases, he was on bail. It is submitted that copy of the decision of the Advisory Board was not served on the detenu. It is also further contended that wife of the detenu was on her family way and was likely to deliver a baby and at such point of time, the illegal detention has resulted in serious mental agony to the members of the family.

4. Learned counsel for the petitioners has placed reliance on the judgment of the Division Bench of this Court in the case of Smt. R. Latha Vs. T.Madiyal, Commissioner of Police, Bangalore City and others [2000 (5) Kar.L.J. 304 (DB) to contend that although detenu was enlarged on bail vide order dated 15.04.2013 passed in Crime No.89/2013 and order dated 28.09.2013 passed in Crime

No.203/2013, without taking note of the same and without applying their mind to these orders and the applications filed for bail, impugned orders have been passed. Reliance is also placed by him on the judgment of the Apex Court in the case of Abdul Satar Ibrahim Manik, Petitioner Vs. Union of India and others, Respondents [AIR 1991 SC 2261] in this regard.

5. Learned Government Advocate, taking us through the statement of objections filed, vehemently contends that the detenu was a menace to the area; his activities were detrimental to peace, law and order in the region and that is why he has been detained to prevent further disturbance to the people in this region. He invites our attention to various judgments of the Apex Court including to the judgment in the case of D.M.Nagaraj Vs. Government of Karnataka and others [(2011) 10 SCC 215] and G.Reddeiah Vs. Government of Andhra Pradesh and another [(2012) 2 SCC 389] to contend that merely because detenu had been enlarged on bail in some cases it will not be a ground to interfere with the order of detention.

6. We may usefully extract the principles laid down in this regard by the Apex Court in Abdul Sathar Ibrahim Manik's case. The Apex Court after referring to several other judgments in the case of Abdul Sattar [AIR 1991 SC 2261] such as Abdul Sattar Abdul Kadar Shaikh Vs. Union of India (1990) 1 SCC 480], Syed Farooq Mohammad Vs. Union of India, [(1990) 3 JT 102]:[AIR 1990 SC 1597], N.Meera Rani Vs. Govt. of Tamil Nadu, [(1989) 4 SCC 418]: (AIR 1989 SC 2027], Sanjay Kumar Aggarwal Vs. Union of India [(1990) 3 SCC 309:[AIR 1990 SC 1202] and Kamarunnissa Vs. Union of India, [AIR 1991 SC 1640: (1991 Cri LJ 2058) has laid down the following principles:

(1) "A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on

being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court. (3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non- application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody. (4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

7. We have given our anxious consideration to the entire materials on record. We have bestowed our particular attention to the nature of cases registered against the detenu. In 14 out of 16 cases, detenu has been acquitted and two cases

pending against the detenu are in Crime No.89/2013 under Sections 341, 504, 323 and 506 of IPC and Crime No.203/2013 under Section 110 (E and G) of Cr.P.C. In the said two cases which are presently pending against the detenu, he has been released on bail vide orders dated 15.04.2013 and 28.09.2013 respectively. In the order of detention, we do not find any reference to the orders passed by the competent Court enlarging the detenu on bail in these two criminal cases. Apparently, copies of these orders were neither perused by the detaining authority nor made available to the detenu. In the absence of any reference to the orders granting bail in respect of these two criminal cases which were the only cases pending against the detenu during the relevant point of time, as rightly contended by the learned counsel for the petitioners, the detention order suffers from non-application of mind to the relevant materials. A Division Bench of this Court, in the case of R.Latha, had an occasion to consider the validity of the order of detention where the detaining authority had not applied its mind to the orders granting bail. Referring to the decision in Abdul Sathar Ibrahim Manik Vs. Union of India and others [AIR 1991 SC 2261], the Division Bench has held that in such circumstances, the order of detention would stand vitiated for non-consideration of relevant materials. Therefore, we are of the view that as the detaining authority has not applied its mind to the relevant material, particularly, the orders granting bail in the two criminal cases which were the only cases pending at the time the detention order was passed, it has to be said that the order of detention is vitiated.

8. Accordingly, this petition is allowed. The impugned orders are set aside. The detenu is ordered to be set at liberty immediately unless his custody is required in any other case. Liberty is reserved to the detaining authority to pass orders afresh after considering the relevant materials.