

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION NO.8405 OF 2015

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ORDER: (*Per Hon'ble Justice Nooty Ramamohana Rao*)

This writ petition is directed against the order of preventive detention passed by the Commissioner of Police, Hyderabad City, on 24.10.2014, which was confirmed by the State Government in their orders contained in G.O.Rt.No.1237 G.A.D dated 03.12.2014. The Commissioner of Police exercising the power available to him under Subsection 2 of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (henceforth for brevity referred to as 'Act') has passed the order of preventive detention. In the grounds of detention, specific reference was made to two criminal cases registered against the detainee. The first one related to Crime No.177/2014 registered by Nalgonda Police Station based upon an incident that took place on 11.05.2014, when one Konapuri Ramulu who came to Nalgonda to attend a wedding, has been attacked at about 11:30 hours and was shot dead. The second incident related to Crime No.63/2014 registered by Chaitanyapuri Police Station. Crime was registered based upon a complaint lodged by the Sub Inspector of Polcie, that the detainee and his associates have conspired and hatched a plan to kill Konapuri Ramulu. The wife of the detainee instituted this writ petition. It is urged that in both the criminal cases registered against the detainee, the detainee was granted bail by the regular Criminal Court and he was complying with the conditions, subject to which the bail was granted. It was further urged that the cases which are booked against the detainee are the result of rivalry between two sets of individuals and hence the question of breach of public order would not arise.

Sri T. Koteshwara Prasad, learned counsel for the petitioner would submit that the involvement of the detainee in certain crimes, even if it is assumed to be correct as of

now would only reflect a breach of law and order on his part and it would not amount to breach of public order. He would further submit that the Commissioner of Police being a subordinate agent to the State Government could not have passed order of detention for more than three months at the first instance and for this proposition of law, he places reliance upon the judgment rendered by the Supreme Court in ***Cherukuri Mani vs. The Chief Secretary, Government of Andhra Pradesh.***

The Commissioner of Police has filed a detailed counter affidavit. The Commissioner of Police, explained as to why he was satisfied that the detenue is required to be detained in the larger interests of the society.

With a view to prevent the Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers indulging in dangerous activities prejudicial to the maintenance of Public Order, the State Legislature enacted the Act. Section 2 (g) defined the expression Goonda in the following words:-

“goonda’ means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.”

The expression ‘Goonda’, therefore, attracts men who either by themselves or as a member of a Gang or leader of a Gang habitually commit or abet the commission of offences under Chapter XVI or XVII or Chapter XXII of Indian Penal Code (hereinafter for short referred to as ‘IPC’).

Chapter XVI of the IPC dealt with various offences affecting the human body and the punishment to be provided therefor. Chapter XVII IPC provided for various offences against property and the punishment for such offences, while Chapter XXII IPC dealt with the offences relating to criminal intimidation, insult, annoyance and the punishment therefor. If one were to go by the detention order, the Commissioner of Police has clearly brought out the activities indulged in regularly by the detenue, which make him squarely fall within the meaning of “Goonda” as defined in the Act.

The basis for forming the subjective satisfaction by the Commissioner of Police has been indicated that the detenu was committing one offence or the other contained in Chapter XVII of IPC repeatedly and hence he has formed the opinion that the detenue was habitually committing or abetting the commission of such offences.

In “***Dr. Lohia v. State of Bihar***” the Supreme Court held that the expression “public order” did not take in every infraction of law and that every disturbance of law and order leading to disorder would not be sufficient to invoke the extraordinary power under a preventive detention law.

In “***Subramanian v. State of Tamil Nadu and another***” the principles have been spelt out by the Supreme Court in paragraph No.14 in the following words:

“It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.”

A Seven Judge Constitution bench of the Supreme Court in “***Madhu Limaye v. Sub-Divisional Magistrate***” again dealt with the question and it was observed as under:

“In our judgment the expression ‘in the interest of public order’ in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within ordre publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression ‘in

the interest of public order' is very wide.”

In “***Kanu Biswas v. State of West Bengal***” the Supreme Court opined:

“The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of society undisturbed?”

In “***Arun Ghosh v. State of West Bengal***” the Supreme Court held:

“The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference.

The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

In view of the above legal principles, when we examine the conduct attributed to the detainee, it emerges that it is causing great disturbance to the even tempo of the society at large. Every crime is bound to shake the confidence of the society at large. Because, generally no society would take to crime as a mere operation indulged in by one or more number of individuals. But however, all crimes do not have the tendency to disturb the even tempo of the society. It is the extent of the reach of the crime that distinguishes it from a problem afflicting mere law and order and the public order. If a person can be shot dead in broad day light, and in public gauge, that too inspite of the State providing a couple of armed gunmen with a view to protect such an individual, such an incident cannot be characterized as a mere breach of law and order. It affects the confidence of the society at large. If the State machinery has failed to save the individual, the public at large would not feel secure. We are, therefore, of the opinion that the subjective satisfaction recorded by the Commissioner of Police cannot be taken exception to.

Since the learned counsel for the petitioner has placed reliance upon the judgment rendered by the Supreme Court in Cherukuri Mani's case, it would be appropriate for us to point out that in ***Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another*** wherein, a similar contention has been canvassed before the Supreme Court based upon the contours of a similar provision contained in Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981, the Supreme Court has answered the said contention in the following manner:

“31. Coming now to the second argument of Dr. Chitale to the effect that proviso to Section 3(2) of the Act, prohibited the State Government to make an order of detention in the first instance, exceeding three months, and since the order of detention in the instant case had been made for a period exceeding three months, it was vitiated.

33. A plain reading of the Section shows that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by Sub-Section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in Sub-section (1), exercise the powers of the State Government as conferred by Sub-Section (1). The proviso to Sub-Section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under Sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under Sub-Section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a

detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails.”

In “**Puranlal Lakhanpal v. Union of India**” the Supreme Court held in the following manner:

“7. Now, the point taken by the appellant is this. According to him, the expression 'such detention' occurring in sub-clause (a) of clause (4) of Art. 22 refers not merely to the original order of preventive detention but to the detention of a person for a period longer than three months; therefore, the Advisory Board when it makes its report is required under the sub-clause to record its opinion that there is sufficient cause not merely for the original order of detention but also for detention of that person for a period longer than three months.....

15. Clause (7) of Art. 22 is an exception to clause (4) of that Article. It authorises Parliament alone to pass a law of preventive detention authorising detention of a person for more than three months without obtaining the opinion of an Advisory Board so long as the circumstances under which and the class or classes of cases in which a person may be detained for a longer period than for three months are set out in the enacted law. The Constitution evidently does not contemplate detention of the person for a period of three months or less as sufficiently serious to have the safeguard of a report by an Advisory Board to the effect that there is sufficient cause for detention....”

What then is the scheme of the Act under our consideration? An order of detention is made under S. 3 of the Act. If the order is made by any officer under sub-s. (2) of S. 3, a report has to be submitted to the State Government to which the officer is subordinate and the order does not remain in force for more than twelve days unless in the meantime it has been approved by the State Government. Under S. 7 of the Act, the grounds of detention have to be communicated to the detenu, as soon as may be but not later than

five days from the date of detention. S. 8 relates to the constitution of an Advisory Board. Under S. 9 in every case where a detention order has been made under the Act; the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the detenu. Section 10 prescribes the procedure of the Advisory Board and lays down that the Advisory Board must submit its report to the appropriate Government within ten weeks from the date of detention. Sub-section (2) of S. 10 states that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned. Then comes S. 11 which we have already quoted in extenso. The scheme of the Act has been explained in several decisions of this Court. In *Makhan Singh Tarsikka v. State of Punjab*, 1952 SCR 368 at p. 370: (AIR 1952 SC 27 at p. 28) (B), it was stated that whatever might be the position under the Preventive Detention Act of 1950 before it was amended in 1951, under the Act as amended in 1951, the Government must determine what the period of detention should be only after the Advisory Board to which the case is referred reports that the detention is justified. Patanjali Sastri, C. J., observed :

"It is, therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported." In *Dattatraya Moreshwar v. State of Bombay*, 1952 SCR 612 at p. 626: (AIR 1952 SC 181 at p. 186) (C), Mukherjea, J., (as he then was) said:

"It is not settled by a pronouncement of this Court that not only it is not necessary for the detaining authority to mention the period of detention when passing the original order under S. 3 (1) of the Preventive Detention Act, but that the order would be bad and illegal if any period is specified, as it might prejudice the case of the detenu when it goes up for consideration before the Advisory Board. The Advisory Board again has got to express its opinion only on the point as to whether there is sufficient cause for detention of the person concerned. It is neither called upon nor is it competent to say anything regarding the period for which such person should be detained. Once the Advisory Board expresses its view that there is sufficient cause for detention at the date when it makes its report,

what action is to be taken subsequently is left entirely to the appropriate Government and it can under S. 11 (1) of the Act 'confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.'. In my opinion, the words 'for such period as it thinks fit' presuppose and imply that after receipt of the report of the Advisory Board the detaining authority has to make up its mind as to whether the original order of detention should be confirmed and if so, for what further period the detention is to continue. Obviously, that is the proper stage for making an order or decision of this description as the investigation with regard to a particular detenu such as is contemplated by the Preventive Detention Act is then at an end and the appropriate Government is in full possession of all the materials regarding him."

At page 637 (of SCR) : , of the report, the learned Judge further said:

"Under the Constitution, the detention of a person under any law providing for preventive detention cannot be for a period of more than three months unless the Advisory Board is of the opinion that there is sufficient cause for the detention of the person concerned. The Constitution itself has specified the maximum limit of the initial detention and detention for a period longer than three months can only be made on the basis of the report of the Advisory Board,." In view of these observations, it is quite clear what the scheme of the Act is. The Act authorises a possible detention of more than three months; the order of detention is therefore referred to the Advisory Board, and it is only when the Advisory Board makes its report that the appropriate Government fixes the period of detention under sub-s. (1) of S. 11 of the Act.

For all these reasons, we hold that sub-s. (1) of S. 11 of the Act does not contravene any of the provisions of Art. 22 and is accordingly valid."

In "***Haradhan Saha v. State of West Bengal***" the Constitution Bench of the Supreme Court, on considering the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:-

".....First; merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his

detention under the Act. Second; the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third; where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order. Fourth; the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth; the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

Section 3 – Power to make orders detaining certain persons:

1. The Government may, if satisfied with respect to any bootleggers, dacoit, drug-offender, goonda, immoral traffic offender or lang-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
2. If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1) exercise the powers conferred by the said sub-section.

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time by, any period not exceeding three months at any one time.

3. When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the

Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

(Emphasis is brought out by me)

Unfortunately, the aforementioned legal principles have not been noticed by the Supreme Court while deciding Cherukuri Mani's case. Hence, we are of the opinion that the judgment rendered by the Supreme Court on the earlier occasions referred to supra are required to be followed by us.

For the aforementioned reasons, there is no merit in this writ petition and it is accordingly dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

28.09.2015

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