

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.11930 OF 2015

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ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

The relief sought for in this Writ Petition is for a Writ of *Habeas Corpus* to be issued directing the respondents to produce the detenu Sri T. Hari Krishna, (who is detained in Central Prison, Rajahmundry), before the Court, and to order that he be released forthwith after declaring his detention as illegal and unconstitutional.

Facts, to the limited extent necessary for disposal of this Writ Petition, is that the petitioner's son Sri T. Hari Krishna was detained, under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, pursuant to an order of detention passed by the 2nd respondent on 20.02.2015. Sri T. Hari Krishna was detained on the ground that he had committed the offence of illegal possession of illicit liquor, and it was necessary that he be detained to prevent him from acting in a manner prejudicial to the maintenance of public order and injurious to public health. The order of detention was approved by the Government on 26.02.2015. The petitioner was presented before the Advisory Board which met on 11.03.2015, and opined that the detenu should be continued in detention. Thereafter, a confirmation order was passed by the Government in G.O.Rt. No.944 dated 24.03.2015, and the detention of Sri T. Hari Krishna was directed to be continued for a period of 12 months from the date of his detention *i.e.*, 20.02.2015. Aggrieved by the said orders of detention and confirmation, the jurisdiction of this Court under Article 226 of the Constitution of India is invoked and a Writ of *Habeas Corpus* is sought.

Sri T.S.N. Murthy, learned counsel for the petitioner, would question the

validity of the order of detention on two grounds; firstly, that all the three cases registered against the detenu, under Section 7(A) read with Section 8(e) of the Andhra Pradesh Prohibition (Amendment) Act, 1997, have all ended in acquittal; and secondly that the complaint, alleged to have been given by the local inhabitants on 24.01.2015, included the name of a person who had died more than a year prior thereto on 10.11.2013.

On the other hand the Learned Government Pleader for Home, appearing on behalf of the learned Advocate General, would submit that, while the petitioner has been acquitted in all the three crimes registered against him, his acquittal was on giving him the benefit of doubt; such acquittal would not disable the detaining authority from passing an order of detention; the contention, that the complaint dated 24.01.2015 contained the signature of a dead person, is not reflected in the letter of the corporator; and, as the grounds of detention show that the petitioner's detention is to ensure maintenance of public order, no interference is called for. Learned Government Pleader would place reliance on **Golam Hussain alias Gama Vs. The Commissioner of Police, Calcutta and others.**

Before examining the rival submissions, urged by learned counsel on either side it is useful to note the limits within which the power of preventive detention can be exercised, as it invades the personal liberty of citizens. Personal liberty is of the widest amplitude covering a variety of rights. Its deprivation shall only in accordance with the procedure prescribed by law conformable to the mandate of the Supreme Law, the Constitution, more particularly to Article 21 thereof. (**N. Sengodan Vs. State of Tamil Nadu; Bhut Nath Mete Vs. State of W.B.**). Of all fundamental rights, conceded to the citizens under the Constitution, the right of personal liberty is the most cherished. A person is not to be deprived of this right except in accordance with the procedure laid down by law even if he be a man of the most desperate character. (**Pilli Yeteswari Vs. Govt. of A.P.**).

Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided, against the improper exercise of the power, must be jealously watched and enforced by the Court. (**Ram Krishan**

Bhardwaj Vs. State of Delhi). Article 22(3)(b) of the Constitution of India, which permits preventive detention, is an exception to Article 21 of the Constitution. An exception cannot, ordinarily, nullify the full force of the main rule, which is the right to liberty guaranteed under Article 21 of the Constitution. An exception can apply only in rare cases. The imposition of what is, in effect, a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with the ordinary concepts of the rule of law. (**Rekha Vs. State of T.N; R. Vs. Secy. of State for the Home Deptt., ex p Stafford**). The law of preventive detention can only be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. (**Commissioner of Police Vs. C. Anita; Union of India Vs. Amrit Lal Manchanda**).

The power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty which is the most cherished and prized possession of man in a civilised society. The said power has to be exercised with the greatest care and caution, and it is the duty of the Courts to ensure that this power is not abused or misused. (**Durgam Subramanyam Vs. Government of A.P.**; [Francis Coralie Mullin Vs. UT of Delhi](#)). The power of preventive detention must be confined to very narrow limits, otherwise the right to liberty would be rendered nugatory. To prevent misuse of this potentially dangerous power, the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is mandatory and vital. (**Rekha**⁶). When it comes to fundamental rights under the Constitution, the Court, irrespective of the enormity and gravity of allegations made against the detenu, must intervene. The gravity of the evil to the community, resulting from anti-social activities, cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by law, particularly as normal penal laws would still be available for being invoked instead of keeping a person in detention without trial. (**Kundanbhai Dulabhai Shaikh Vs. Distt. Magistrate, Ahmedabad; Mahesh Kumar Chauhan Vs. Union of India; Prabhu Dayal Deorah Vs. Distt. Magistrate**). The law relating to preventive detention has always been strictly interpreted so as to uphold the concept of individual freedom. Courts have always acted to safeguard the purity of such right which is available to be interfered with only under the most stringent and rigorous conditions. (**Pilli Yeteswari**⁴).

On the 1st ground of challenge, to the order of detention, that the detenu had been acquitted in all the three criminal cases which formed the basis of the detention order, it is useful to refer to the observations of the Supreme Court in **Golam Hussain**¹. The Supreme Court held:-

“.....The basic imperative of proof beyond reasonable doubt does not apply to the ‘subjective satisfaction’ component of imprisonment for reasons of internal security. To quarrel with such a proposition is to challenge the wisdom of Parliament. Of course, we can visualise extreme cases where a Court has held a criminal case to be false and a detaining authority with that judicial pronouncement before him may not reasonably claim to be satisfied about prospective prejudicial activities based on what a Court has found to be baseless. But the present case where the order of discharge is made purely for want of evidence on the score that witnesses were too afraid to depose against a desperate character cannot come under this exceptional category.....” (emphasis supplied)

In view of the law declared by the Supreme Court in **Golam Hussain**¹, the mere fact that the petitioner has been subsequently acquitted in the criminal cases, which formed the basis of the order of detention, would not justify either the order of detention being set-aside or the detenu being set at liberty more so, as it is not even contended before us that the Court, which passed the order of acquittal, had held that the criminal cases, registered against the detenu, were false.

The second ground, on which the order of detention is based, as is evident from the grounds of detention dated 20.02.2015 itself, is that there were several oral and written complaints received against the detenu regarding his illegal activities which were causing widespread danger to public health, and was creating a feeling of insecurity among the general public of that locality; if his activities were allowed unchecked, there was every danger of its leading to liquor tragedies costing many lives of the poor in Rajendra Nagar area of Rajahmundry Urban Mandal and the surrounding areas; and it, thereby, effected the public order.

Along with the grounds of detention, the petitioner was furnished a copy of the complaint, dated 24.01.2015, allegedly given by 15 inhabitants of the locality. While the petitioner has filed copies of the affidavits of four of them denying having given

any such complaint, and a certificate of the Corporator dated 10.03.2013 to the effect that the complainants were not staying in the locality for the past two years, what we consider fatal to the order of detention is the specific averment, in the additional affidavit filed by the petitioner, which reads as under:

“it is submitted that the local corporator has given a letter dated 10.03.2015 stating that the persons alleged to have been signed were not residing in the local area from the past 2 years and one of the signatories by name Smt. Neeladri Suryakantham expired on 10.11.2013 and her death certificate was filed herewith as material papers of the perusal of the Court.”

Also enclosed, with the additional affidavit, is the death certificate issued by the Registrar of Births and Deaths, Rajahmundry, certifying that Smt. Neeladri Suryakantham had died on 10.11.2013.

It is not in dispute that the complaint dated 24.01.2015 contains, among others, the signature of Smt. Neeladri Suryakantham also. All that is stated, in the additional counter-affidavit filed by the second respondent, is that it is nowhere stated, in the letter of the Corporator, that one of the signatories namely Smt. Neeladri Suryakantham died on 10.11.2013. The respondents cannot resort to hyper-technicalities, and take advantage of errors, if any, in drafting the writ affidavit. In a *Habeas Corpus* petition, filed seeking release of the detenu, the petitioner should show a violation of either Article 21 or Article 22 of the Constitution as the personal liberty of the citizen, which the law so sedulously and carefully protects, can be taken away only by the procedure established by law when public good is jeopardised, and not merely private interests. What has to be considered by the Court, in a *Habeas Corpus* petition, is whether the detention is legal or not, and not whether the detaining authorities have wrongly or rightly reached their satisfaction. **(Ram Bali Rajbhar Vs. State of W.B.)**. It would, however, be unreasonable to insist that, in preventive detention matters, the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention, and make out a case in support of those grounds before a rule is issued, or to hold that the detaining authority is not liable to do any thing more than just meet the specific

grounds of challenge put forward in the petition. (**Ichu Devi Choraria Vs. Union of India**).

When a rule is issued, it is incumbent on the detaining authority to satisfy the Court that the detention of the petitioner is legal, and in conformity with the mandatory provisions of the law authorising such a detention. In answer to the rule, the detaining authority must place all the relevant facts before the Court to show that the detention is in accordance with the provisions of the Act. It would be no argument, on the part of the detaining authority, to say that a particular ground is not taken in the petition. Once the rule is issued it is the bounden duty of the Court to satisfy itself that all the safeguards, provided by the law, have been scrupulously observed, and the citizen is not deprived of his personal liberty otherwise than in accordance with law. (**Ichu Devi Choraria¹⁶; Niranjan Singh Vs. State of Madhya Pradesh; Shaikh Hanif, Gudma Majhi & Kamal Saha Vs. State of West Bengal; Dulal Roy Vs. District Magistrate, Burdwan; Nizamuddin Vs. State of West Bengal; Mohd. Alam Vs. State of West Bengal; Khudiram Das Vs. State of W.B.**).

The burden, of showing that the detention is in accordance with the procedure established by law, is placed on the detaining authority as Article 21 of the Constitution provides, in clear and explicit terms, that no one shall be deprived of his life or personal liberty except in accordance with the procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal that, whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the Court that it has acted in accordance with the law. Even where a requirement of the law is breached in the slightest measure, Courts would not hesitate to strike down the order of detention or to direct release of the detenu. Courts have always regarded personal liberty as the most precious possession of mankind, and have refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade. (**Ichu Devi Choraria¹⁶**).

Where the liberty of the subject is involved, it is the bounden duty of the Court

to satisfy itself that all the safeguards, provided by the law, have been scrupulously observed, and the subject is not deprived of his personal liberty otherwise than in accordance with law. (**M. Ahamedkutty Vs. Union of India; Khudiram Das²²**). If a man can be deprived of his liberty under a law, by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the law. Strict compliance with the letter of the law is the essence of the matter, in dealing with a statute which drastically interferes with the personal liberty of citizens. It would be legitimate to require, in such cases, strict observance of the law. If there is any doubt whether the law has been strictly observed, that doubt must be resolved in favour of the detenu. (**Ram Manohar Lohia Vs. The State of Bihar**).

The procedural safeguards, prescribed for protection of personal liberty, must be strictly followed. The history of personal liberty is a history of insistence on procedural safeguards. (**Ummu Sabeena Vs. State of Kerala**). There is nothing like unfettered discretion immune from judicial review. In a Government under law, there can be no such thing as unreviewable discretion. Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some official, some bureaucrat. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions. This is much more so in a case where personal liberty is involved. Judicial control is necessary to ensure that the power, in the hands of an individual officer or authority, is not misused or abused or exercised arbitrarily or without any justifiable grounds. (**Khudiram Das²²; United States v. Wunderlick**).

The question is whether or not Smt. Neeladri Suryakantham, who is also said to have signed the complaint dated 24.01.2015 along with others, had died more than a year prior thereto for, if she was not alive as on 24.01.2015, she could not have signed the complaint. In such an event, the genuineness of the complaint dated 24.01.2015 would itself be in doubt. The petitioner has not only stated in the additional affidavit, that Smt. Neeladri Suryakantham died on 10.11.2013, but has also enclosed thereto a copy of the death certificate. The additional counter-affidavit of the second respondent is evasive, and does not specifically deal with the contention that one of the signatories, to the complaint dated 24.01.2015, had died

long before on 10.11.2013.

In the absence of any specific denial in the counter affidavit, to the assertion that Smt. Neeladri Suryakantham had died more than a year before the complaint dated 24-01-2015 was made, allegedly containing her signature, it must necessarily follow that the detaining authority had exercised his subjective satisfaction, in passing the order of detention, on false information furnished to him by the sponsoring authority.

It is no doubt true that the order of detention is passed on the subjective satisfaction of the detaining authority, and this Court would not sit in judgment over such subjective satisfaction, or set the detenu at liberty merely because, in its view, such satisfaction ought not to have arrived at. So long as the satisfaction of the detaining authority is based on material on record, no interference is called for. This Court would also not enquire into the truth or otherwise of the contents of the order of detention. It is for this reason that this Court has not taken upon itself the task of examining whether or not the affidavits filed by four of the fifteen complainants, that they did not give any such complaint, is true or false.

Sri T.S.N. Murthy, learned counsel for the petitioner, would contend that the order of detention is vitiated as it is based on the false information furnished by the sponsoring authority. If this assertion had been denied by the second respondent in his additional counter-affidavit filed before this Court, it could then possibly have been contended that this Court should not examine the truth or otherwise of the allegations made in the additional affidavit. The specific averment of the petitioner that one of the signatories, of the complaint dated 24-01-2015, died more than a year earlier in November, 2013, has not been denied in the additional counter affidavit filed by the second respondent. The genuineness of the death certificate, a copy of which has been enclosed along with the additional affidavit, has also not been disputed by the second respondent in his additional counter affidavit. It is evident, therefore, that the detaining authority was influenced by the false information, furnished to him by the sponsoring authorities, that the inhabitants of the locality had expressed apprehension, in their complaint dated 24-01-2015, regarding the activities of the detenu.

The subjective satisfaction of the detaining authority is not wholly immune from judicial review. There is an area, limited though it be, within which the validity of the subjective satisfaction can be subjected to judicial scrutiny. As subjective satisfaction, is a condition precedent for exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority. If it is not, the condition precedent would not be fulfilled, and the exercise of power would be illegal. (**Khudiram Das²²**). Subjective satisfaction notwithstanding, the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention. (**Khudiram Das²²; Bhut Nath Mete³**). If there be found in the Statute, expressly or by implication, matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider. (**Khudiram Das²²**). The satisfaction of the authority must be grounded “on materials which are of rationally probative value”. The grounds on which the satisfaction is based must be such as a rational human being can consider as being connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the Statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power, or the manner or extent to which it should be exercised, the exercise of the power would be bad. (**Khudiram Das²²; Pratap Singh Vs. State of Punjab; Machindar Vs. King**).

It now transpires, that at least one of the complainants was not even alive on the date of the complaint. As the order of detention, and the subjective satisfaction of the detaining authority, is based on information which is *ex facie* false, the order of detention must be held to suffer from non-application of mind, and stands vitiated. The material on which the satisfaction of the detaining authority is grounded (i.e., the complaint dated 24.01.2015) is not of rationally probative value. In the light of the undisputed fact that one of alleged signatories of the complaint dated 24.01.2015

died more than a year prior thereto, and could not have signed the said letter, no rational human being would consider the complaint dated 24.01.2015 to be genuine. As the complaint dated 24.01.2015 also influenced the detaining authority in arriving at the satisfaction that the detenu must be held in preventive custody, it is evident that an irrelevant and obscure ground formed the basis of the order of detention. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. (**Mohd. Yousuf Rather Vs. State of J&K**).

Learned Government Pleader for Home (A.P.) would place reliance on the judgment of the Supreme Court, in **Ram Bali Rajbhar**¹⁵, to contend that, since this contention has not been urged before the Advisory Board, this Court should not take note of facts urged for the first time in the Writ Petition. The mere fact that the detenu has not raised this ground before the Advisory Board, does not preclude such a contention being urged before this Court in Habeas Corpus proceedings under Article 226 of the Constitution of India. Accepting this submission of the learned counsel, would mean that, for his failure to raise these contentions before the Advisory Board, the detenu must remain in preventive custody for 12 months, even if he were to come to know later of certain information, which the detaining authority was unaware of when he passed the order of detention, and the information is such as to vitiate the order of detention itself.

The order of detention is set-aside. The detenu shall be set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him. The Writ Petition is, accordingly, allowed.

In consequence, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 02-12-2015.

Note:

Issue C.C. by 07.12.2015.

B/o.Dsh

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

04122015

WRIT PETITION No.11930 OF 2015

(Order of the Division Bench delivered by
Hon'ble Sri Justice Ramesh Ranganathan)

Date. 02-12-2015

DSH