

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS
+ W.P. No. 10257 of 2015

% Dated 08.09.2015

Eashwar Lal.

.... Petitioner

Vs.

\$ The State of Telangana,
Rep. by its Chief Secretary,
General Administration Department,
Hyderabad & others.

....Respondents

! Counsel for the petitioner : Sri A. Prabhakar Rao

^ Counsel for Respondents 1 to 3 : GP for Home (TG)
Counsel for Respondent No.4 : GP for GAD (TG)

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> HEAD NOTE:

? Cases referred

1. AIR 1970 SC 1228
2. (1975) 3 SCC 198
3. (2012) 4 SCC 699
4. (1982) 2 SCC 403
5. (1982) 1 SCC 271
6. AIR 1973 Supreme Court 757
7. (1980) 4 SCC 544
8. (1991) 1 SCC 476
9. (1999) 1 SCC 417
10. (2011) 10 SCC 215
11. (2013) 4 SCC 435

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P. No. 10257 OF 2015

Between:

Eashwar Lal.

.... Petitioner

Vs.

\$ The State of Telangana,
Rep. by its Chief Secretary,
General Administration Department,
Hyderabad & others.

.... Respondents

! Counsel for the petitioner : Sri A. Prabhakar Rao

^ Counsel for Respondents 1 to 3 : GP for Home (TG)
Counsel for Respondent No.4 : GP for GAD (TG)

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DATE OF JUDGMENT PRONOUNCED: 08.09.2015

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SUBMITTED FOR APPROVAL:

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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes
3. Whether Their Lordship wish to see the fair copy of the Judgment? No

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS
WRIT PETITION No. 10257 OF 2015**

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

This Writ Petition is directed against the order of detention passed by the Commissioner of City Police, Hyderabad on 24.01.2015 exercising the power available to him under sub-section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. The father of Sri Manmohan Singh (hereinafter be referred to as 'the detenu') moved this Writ Petition on his behalf.

The Commissioner of Police has passed the order of detention on 24.01.2015 and also supplied the grounds of detention to the detenu on the same day itself. He has referred to five separate instances of various crimes in which the detenu was involved. The first one is Crime No. 123 of 2013 registered by Mangalhat Police Station, pursuant to an incident that took place on 05.05.2013. The complainant was proceeding on a horseback at about 15.30 hours near about Jinsi Chowrah locality and when he was approaching Chunneki Batti, the detenu has driven his car in a negligent manner, hit the horse from behind, and as a result of this accident, the horse had jumped and when the complainant questioned the detenu for his rash driving, the detenu not only abused him in an improper language

but also caused a blow with a stone causing bleeding injuries on his head. In the meantime, the owner of the horse reached the spot. Even he was abused and assaulted. This, according to the Commissioner, created a kind of terror in the locality. The second crime is Crime No. 176 of 2014 registered by the same Mangalhat Police Station concerning the event that took place on 03.07.2014. While the complainant and his friend were standing beside Jali Hanuman Temple, Mangalhat Area, at about 05.00 PM, the detenu and his associate came there on a motor bike and initially abused them and thereafter, bet them mercilessly without there being any reason, thus, causing bleeding injuries. It is alleged that the detenu and his associate threatened various shop-keepers around the area with dire consequences, thus created panic in the locality. The third crime relates to an offence booked by Prohibition & Excise Police of Dhoolpet, where the Government Chemical Examiner had opined that the sample collected by them from the house of the detenu is an illicitly-distilled liquor, which is unfit for human consumption and injurious to health. The next two offences referred to in the detention order were also excise offences of similar nature as the one which is just now referred to. Taking into account and consideration these cases and the manner in which these offences have been gone about occurring and also the terror and panic that they created, the detaining authority had considered it appropriate to detain the detenu, so as to prevent him from repeating the same offences and also to prevent him from indulging in any further act, which is capable of disturbing the peace and tranquility of the society. The order passed by the detaining authority has been confirmed by the State Government and when the material has been placed before the Advisory Board, the Advisory Board tendered its opinion that there was sufficient material and basis for the order. The order of detention has been confirmed by the State Government on 26.03.2015 proposing to confine the petitioner in detention for a period of 12 months from the date of detention. It is in

this backdrop, the present Writ Petition came to be instituted.

We heard Sri A. Prabhakar Rao, learned counsel for the petitioner and Sri H. Venu Gopal, learned Government Pleader for Home, State of Telangana.

Sri Prabhakar Rao would submit that ordinary crimes, which were booked against the detenu, have been taken into account and consideration and they were sought to be made the basis for the order of detention unjustly. This apart, the events, which have been made the basis in the detention order are all remote events and they are not proximately connected to the event of preventive detention passed by the Commissioner of Police on 24.01.2015. It is therefore, urged that the order of detention is *per se* bad for lacking appropriate material and basis for preventively detaining the detenu. It was also urged by Sri Prabhakar Rao that on behalf of the detenu, when a copy of a representation is delivered to the jail authorities, so that they can secure the signature of the detenu thereon, so as to forward the same for consideration to the State Government, the jail authorities have merely collected the copy of the representation, but have not acted in the matter as expected of them. In those set of circumstances, the father of the detenu has submitted the representation on 16.02.2015 and sent it by Registered Post. The said representation has, in fact, been received on 19.02.2015, but however, it was rejected by the State Government belatedly on 21.04.2015. For the sheer delay and laches on the part of the government to consider the representation submitted by the petitioner, the fundamental right guaranteed to the detenu under Article 22(5) read with Article 21 of the Constitution of India is breached.

Per contra, Sri Venu Gopal, learned Government Pleader would urge that it is not the number of crimes in which the detenu was involved what is relevant matter for the purpose of arriving at a satisfaction by the detaining authority for passing an order of detention, but potentiality of the acts and its impact upon the larger society what

really matters. He placed reliance upon the following judgments of the Supreme Court in *Arun Ghosh v. State of West Bengal*^[1], *Haradhan Saha v. State of West Bengal*^[2], *Subramanian v. State of Tamilnadu*^[3] and *Ashok Kumar v. Delhi Administration*^[4]

The learned Government Pleader would point out that consistently the Supreme Court has pointed out that the facts, as set out in the grounds of detention, if furnished sufficient material to the detaining authority, the order of detention can be passed based upon the subjective satisfaction of the detaining authority about the nature of dangerous activities indulged in by the individual and if the individual was considered to be dangerous for the public good, he can be detained. It is also relevant to notice the principle enunciated by the Supreme Court in various cases, referred to supra. It has been brought out that the crucial question relating to the satisfaction of the detaining authority must relate to the activities of the detenu would fall within the domain of public order or they merely relate to the law and order problem. When we have examined the conduct of the detenu, as was reflected in various crimes set out in the grounds of detention, what emerges is that there was sufficient material for the Commissioner of Police to consider that the detenu was consistently indulging in dangerous activities to public good. Let us take for illustration purpose, the very first crime, which has been reported in the detention order. When a person was moving on a horseback which itself is a rare sight on city roads these days, such an activity would not have gone unnoticed by a motorist from a long distance ahead. In spite of that, if the car driven by the detenu, assuming for the purpose of argument, has accidentally hit the horse from behind, in such an event, the ordinary conduct of a human being would be to feel terrible about the accident one would have encountered in view of the sympathy and compassion which one is required to show towards an injured animal. Far from that, it is alleged against the detenu that he has picked up a

quarrel with the horseback man and also assaulted him and the owner of the horse, who arrived at the scene a little later on. Such events are bound to leave the society shell-shocked. The other three crimes, which were noted in the grounds of detention, no doubt, relate to illicit brewing and then pedalling it for human consumption. If we look at them, in a narrow perspective, they may tend to appear to be petty excise offences, but however, illicitly-brewed liquors, which are found to be unfit for human consumption by the Government Chemical Laboratory, will cause enormous impact on the society. It will impact a larger circle leading to tragedies where people tend to lose either their lives or get impaired their eye sight or cause damage to their liver and kidneys. Such activities are certainly dangerous for the public good and hence, they fall within the 'domain of public order'. The crimes, which were cited by the detaining authority in the grounds of detention certainly reflect the dangerous activities of the detenu and hence, we are in agreement with the contention of the learned Government Pleader that there was sufficient material for the Commissioner to arrive at a satisfaction that the detenu deserves to be detained to prevent him from indulging in any such activities any further.

In this context, we remind ourselves that in ***A.K. Roy v. Union of India***^[5] and in ***Subramanian's case*** (referred to supra), the Supreme Court has clearly brought out that the purpose of passing an order under preventive detention is not with a view to punish the individual for the past events or for his past criminal activities, but essentially to prevent him from indulging in any such activities any further. We therefore, are of the opinion that the order of preventive detention passed by the Commissioner of City Police which was approved by the State Government is a legitimate exercise.

But however, there is a serious facet of the controversy which requires greater attention on our part, i.e. a representation was made on behalf of the detenu by his father and the same was sent by Registered Post on 16.02.2015. It was received by the State

Government on 19.02.2015 and the fact remains that it was rejected by the State Government on 21.04.2015. Hence, the question, which requires consideration is “whether the delay that occasioned in rejecting the representation submitted by the father of the detenu would vitiate the further detention of the individual or not”.

It will be relevant to notice that the Supreme Court has reflected upon the requirement of the State to act very promptly and without any unreasonable delay in attending to the representation submitted by the detenu in ***Debendra Nath Goswami v. The State of West Bengal***^[6], after setting out that there cannot be hard and fast line that can be drawn and that in the facts and circumstances of each case, it has to be seen whether the government has considered the representation with reasonable dispatch and promptitude realizing the importance that is liable to be attached to the right to personal liberty of the individuals. Then the Supreme Court has spelt out the principle in that regard in the following words:

“ This obligation can be meaningful only if such representation is also considered with the same sense of urgency with which the authority is required to communicate the grounds and afford the earliest opportunity to the detenu. It must necessarily follow that if the representation is not considered with the same sense of urgency, the very purpose of providing the communication and the opportunity by sub-art. (5) would be frustrated and defeated. The explanation for the delay has to satisfy the conscience of the Court that the State Government concerned considered the representation with the sense of urgency expected of it by the Constitution.....”

Sri Venu Gopal, before attempting to point out as to how the representation made on behalf of the detenu had been dealt with, had raised one objection i.e. the representation submitted by the detenu is what is required by Art. 22(5) to be dealt with and in the context of the scheme of the statute, which did not authorize submission of a representation by an advocate before the Advisory Board also, the representation submitted by third parties need not be dealt with by the

same standards by which a representation of the detenu is required to be dealt with. While we appreciate that the statute, particularly Section 11(5) of the Act, clearly brought out that nothing in this Section shall entitle any person, against whom a detention order has been made, to appear by any legal practitioner in any matter connected with reference to the Advisory Board, notwithstanding the composition of the Advisory Board, which essentially comprises of Judges, who have functioned as such or qualified to be appointed as Judges of the High Court, but yet, the right of representation by a legal practitioner is ruled out. In the instant case, it is the father of the detenu, who submitted the representation seeking release from the detention by the State Government. He is, no doubt, a third party, but he is not a legal practitioner. Being a father and that too a former government servant having worked as a Lecturer in a reputed college of the city and retired as such, we consider that he is entitled to make a representation on behalf of the detenu. Further, we must also bear-in-mind the explanation offered in this regard. It is alleged that a copy of the representation is delivered to the jail authorities for securing the signature of the detenu thereon, but finding that the jail authorities have not acted promptly in that regard, the representation has been signed and forwarded by the father of the detenu through Registered Post. In this context, it is also relevant to notice the principle enunciated in ***Shalini Soni v. Union of India***^[7], wherein the Supreme Court had considered the representation submitted by the detenu through his advocate. In paragraph 4 of the judgment, the principle has been brought out in the following words:

“ The writ petition has to succeed on both the grounds. As we mentioned earlier the answer of the respondents in regard to the ground based on the failure of the detaining authority to consider the representation dated July 27,1980 submitted by the detenu through his advocate was not that the representation was ever considered but that it was not a representation at all. We are unable to agree with the submission made on behalf of the respondents. The representation has not

to be made in any prescribed form. There is no formula nor any magical incantation like “open sesame” to be repeated or chanted in order to qualify a communication as a representation. So long as it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or a reason is mentioned or suggested for such release, there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the Constitution.”

(emphasis is brought out by us)

We therefore, are of the opinion that the objection raised by the learned Government Pleader that the representation is submitted by the father of the detenu but not by the detenu, cannot hold water.

Now the principal question, which we are required to consider, is “whether there is any unreasonable delay on the part of the State in considering the representation submitted on behalf of the detenu on 16.02.2015 or not.”

The Chief Secretary to the Government, in his affidavit, has explained that till the Advisory Board reviewed the case of the detenu on 03.03.2015 and submitted its report that there is sufficient cause for the detention of the detenu, the occasion would not arise for the State Government to deal with the representation dated 16.02.2015. It is true that in ***K.M. Abdulla Kunhi v. Union of India***^[8], it was spelt out that the competent authority can consider the representation only after the order of confirmation was issued based upon the opinion tendered by the Advisory Board. In the instant case, the order of confirmation has been issued by the State Government on 26.03.2015. Therefore, we may not find anything wrong, in principle, in the State Government not dealing with the representation dated 16.02.2015 received by them on 19.02.2015 up to 26.03.2015. But the question was whether the State Government has dealt with the said representation within reasonable dispatch thereafter. The explanation offered, in paragraph 6 of the affidavit filed by the Chief Secretary, having set out that the representation was received on 19.02.2015 and the confirmation order was issued by the State Government on 26.03.2015, has further set out

the relevant fact situation in the following words:

“..... Accordingly, the 1st respondent have called for the views/remarks of the detaining authority on the representation of the petitioner. The Government disposed of the representation considering it independently on 21.04.2015 vide Government Memo No. 23/L&O/A2/2015-7 and the same was communicated to the petitioner.”

The detaining authority has filed an additional counter-affidavit. In paragraph 8 of this additional counter-affidavit of the detaining authority, it is set out that the State Government has called for the views/remarks of the detaining authority on the representation of the petitioner vide Government Memo dated 16.04.2015, which was received by the detaining authority on 18.04.2015 and in compliance thereof, the 2nd respondent -detaining authority has furnished his remarks to the 1st respondent on 20.04.2015 which was taken into account and consideration and the representation was disposed of on 21.04.2015. Thus, the detaining authority has attempted at an explanation for the period from 16.04.2015 up to 21.04.2015, but when we read the affidavits filed by the Chief Secretary to the Government and the detaining authority together, what we could not gather is as to the reasons why the State Government has not acted upon the representation made on behalf of the detenu seeking his release from preventive detention between 27.03.2015 to 15.04.2015. The learned Government Pleader, realizing the importance that we tend to attach to the delay, if any in dealing with the representation, has brought to our notice the principle enunciated by the Supreme Court in ***Rajammal v. State of Tamilnadu***^[9], ***D.M. Nagaraja v. Government of Karnataka***^[10] and ***Abdul Nasar Adam Ismail v. State of Maharashtra***^[11].

In ***Rajammal's case***, Justice Thomas speaking for a three-judge Bench of the Supreme Court, after considering the Constitution Bench judgment of the Supreme Court in ***K.M. Abdulla v. Union of***

India {(1991) 1 SCC 476}, has brought out the principle, in paragraph 8, as under:

“ It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.”

To the same effect is the judgment rendered by a two-Judge Bench in **D.M. Nagaraja's case**. In **Abdul Nasar Adam Ismail's case**, the principle has been brought out, in this context, duly noticing the earlier judgment rendered by the Supreme Court in **Frances Coralie Mullin v. W.C. Khambra** {(1980) 2 SCC 275} where the Supreme Court has brought out the principle in the following words:

“ The time imperative can never be absolute or obsessive.”

The Supreme Court has also noticed its earlier view set out in **L.M.S. Ummu Saleema v. B.B. Gujaral** {(1981) 3 SCC 317} that the delay in dealing with the representation must be adequately explained and then went on to propound the following principle, in paragraph 16:

“ The explanation offered must be reasonable indicating that there was no slackness or indifference. Though the delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes..... If the inter-departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate.....”

Therefore, it is not mere delay what would be considered by Courts as unreasonable in the backdrop of the right guaranteed under Article 22(5) of the Constitution read with Article 21 to a detenu, but what would be relevant for the Court to examine is whether the explanation offered for the delay is a reasonable one and that there was no slackness or indifference on behalf of the State Government in dealing with the representation.

Let us now apply this principle to the fact situation prevailing.

While the State Government is justified in not attending to the representation of the detenu till 26.03.2015, the date on which it passed the orders of confirmation of the detenu, based upon the opinion tendered by the Advisory Board, the further explanation that it had called for the remarks of the detaining authority on 16.04.2015 and that the detaining authority made his remarks available to the State Government on 20.04.2015 and that the State Government has considered the same incidentally and then disposed of the representation made on behalf of the detenu for his release from detention on the very next day i.e. 21.04.2015, may indicate that the State Government has acted with necessary expedition from 16.04.2015 onwards, but what remained unexplained to us was the delay between 27.03.2015 to 15.04.2015. That delay of nearly 20 days, in our opinion, remained totally unexplained. Lack of a reasonable explanation for this, in our opinion, reflects lack of anxiety on the part of the State Government to deal with the right of personal liberty assured by our Constitution to the individuals. We are therefore, of the opinion that failure to explain the reasons for not considering the representation made on behalf of the detenu between 27.03.2015 up to 15.04.2015, is a fatal one, which renders his further detention illegal.

While we confirm that the order passed by the detaining authority is based upon reasonable material for the subjective satisfaction arrived at, by the said authority and while the confirmation order passed by the State Government on 26.03.2015 is also in accord with the judgment rendered by the Supreme Court on the subject, but for the inexplicable delay between 27.03.2015 and 15.04.2015, we have to necessarily declare that any further detention of the detenu becomes untenable and it violates the constitutional mandate contained in Article 22 read with Article 21 of the Constitution.

Therefore, we issue a writ of mandamus declaring the further detention of the detenu as illegal and he shall now be set at liberty

forthwith unless he is required in connection with any other crime.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall stand disposed of.

NOOTY RAMAMOHANA RAO, J

ANIS, J

08th September 2015

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**THE HON’BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON’BLE MRS. JUSTICE ANIS**

WRIT PETITION No. 10257 OF 2015

OPERATIVE PORTION OF THE ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Therefore, we issue a writ of mandamus declaring the further detention of the detenu as illegal. He shall be set at liberty forthwith, unless he is required in connection with any other crime.

With this, the Writ Petition stands disposed of. No costs.

NOOTY RAMAMOHANA RAO, J

ANIS, J

08th September 2015

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[\[1\]](#) AIR 1970 SC 1228
[\[2\]](#) (1975) 3 SCC 198
[\[3\]](#) (2012) 4 SCC 699
[\[4\]](#) (1982) 2 SCC 403
[\[5\]](#) (1982) 1 SCC 271
[\[6\]](#) AIR 1973 Supreme Court 757
[\[7\]](#) (1980) 4 SCC 544
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[\[9\]](#) (1999) 1 SCC 417
[\[10\]](#) (2011) 10 SCC 215
[\[11\]](#) (2013) 4 SCC 435