

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

AND

THE HON'BLE MRS. JUSTICE ANIS

+ WRIT PETITION No. 17192 OF 2015

% Dated: 07.10.2015

BETWEEN

Smt. G. Neeraja

W/o Santhosh Kulkarni

Age 44 years, Occ: Teacher, R/o H.No.6-28

Plot No.G-1, Sai Residency, Chaitanyapuri

Dilsukhnagar, Hyderabad Petitioner

AND

The State of Telangana

Rep by its Chief Secretary,

General Administration Department,

Law & Order, Secretariat, Hyderabad and another Respondents

! Counsel for the Petitioner : Sri G.L. Narasimha Rao

^Counsel for the Respondents : Government Pleader for Home

<Gist:

>Head Note:

? Citations:

1. 2014 (7) SCJ 707
2. (1982) 2 SCC 403
3. AIR 1970 SUPREME COURT 1228
4. (1972) 3 SCC 831
5. AIR 1992 SC 979
6. AIR 1958 SC 163

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WRIT PETITION No.17192 of 2015

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

This writ petition is preferred by the wife of the detenu challenging the correctness and legality of the detention order passed by the Commissioner of City Police on 13.02.2015, which order of detention is confirmed by the State Government through their orders in G.O.Rt.No.1138, General Administration (Law and Order) Department, dated 20.04.2015.

The Commissioner of Police in the grounds of detention passed by him has adverted to as many as 9 instances of gold chain snatchings, allegedly indulged in by the detenu. The first of those 9 instances relates to crime No.628/2013 on the file of Ghatkesar Police Station which was registered based upon an incident which took place on 16.12.2013 at about 15.00 hours. The complainant in that case was sitting in her petty kirana shop, when the detenu and his associates came on a bike and informed the complainant that they are taking photographs of all the shops and they will conduct a draw of lots for presenting 2 gold coins to the winner. The detenu and his associates, it is alleged that made the complainant believe that if she can give her gold chain for inspection by them so that they can think of presenting a similar gold chain to her, in case, she emerges as the winner of the draw. As soon as the unsuspecting complainant parted with her gold chain believing the representation made by the detenu as bonafide, the detenu and his associates

escaped from the scene with the gold chain before the complainant could realise what was instore for her. Though he was remanded to judicial custody in connection with the said case, however, the criminal Court later on released him on bail. The 2nd incident, which almost comprises of a similar event that took place on 27.03.2014 at about 11.00 hours involving a shop keeper at Heritage Parlour and General Store, Opposite Old MLA quarters, Narayanaguda, Hyderabad. The 3rd incident relates to the one that took place on 25.04.2014, the complainant in that case No.142/2014 is a 17 year old girl student, who was sitting in a petty kirana shop and attending to small time business activity there. It is alleged that the detenu approached the shop around 12.15 in the Afternoon on a motorbike and asked for a particular chocolate while the complainant was checking for the stock, the detenu snatched away gold chain weighing about 1 tula from her neck. The detenu was arrested on 10.08.2014 and he was released on bail on 15.10.2014. The remaining 5 other cases also relate to instances relating to snatching gold chain from unsuspecting women folk who are attending to petty kirana shops. The 6th incident which is concerned to crime No.291/2014 is based upon an event which took place on 28.07.2014 involving a 68 year old complainant, who is running his kirana shop at Maruti Nagar, behind DBR Mill, Lower Tank Bund road, when the detenu and his associates introduced themselves as representatives of biscuits and chocolates manufacturers and that they will be supplying the commodities and would also give free gifts of cooling box and a gold ring. With a view to check the size of the gold ring worn by the complainant, the unsuspecting complainant removed his gold ring and gave it to the detenu and soon thereafter, the detenu has allegedly vanished therefrom with the gold ring. The accused in that case were released on bail on 16.01.2015. These 9 instances which the Commissioner of Police has relied upon occurred between 16.12.2013 to 31.07.2014 and in the month of July 2014 itself as many as 5 instances out of these 9 cases have occurred.

Heard Sri G.L. Narasimha Rao, learned counsel for the petitioner and Sri H.Venu Gopal, learned Government Pleader for Home.

Learned counsel for the petitioner has raised several contentions in support of his plea that subjective satisfaction of the Commissioner of Police is vitiated and that the order of confirmation passed by the State Government is equally vitiated. Learned counsel for the petitioner has also developed a contention that the order of

preventive detention passed by the Commissioner of Police at the first instance should have been confined only for a period of 3 months and thereafter, appropriate orders should have been passed, once in every three months drawing inspiration from the judgment rendered by the Supreme Court in **Cherukuri Mani Vs. The Chief Secretary, Government of Andhra Pradesh**.

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 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'). 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 detenu, which make him fall within the meaning of “Goonda” as defined in the Act. The basis for forming 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 detenu was habitually committing or abetting the commission of such offences.

The Commissioner of Police has filed a detailed counter affidavit explaining as to how he was subjectively satisfied that the activities of detenu are more in the nature of breach of public order than a case of mere law and order. The provision for preventively detaining a person is not merely intended as punishment for the crimes allegedly indulged in by the detenu, but, it is essentially to prevent his repetitive involvement in the crime. Certainly when the periodicity of an offence increases then the impact of the event on the society at large has got to be assessed carefully.

Therefore, when we analyse the repeated gold chain snatching events reported against the detenue, they will certainly disclose the fact that the detenu was allegedly involved in as many as 5 such crimes in the month of July 2014 itself. In isolation when we look at the events, they may tend to appear to be directed against the individuals concerned, but cumulative effect of all these cases are studied, the fact remains that the confidence of public at large is likely to be get shattered by the adoption of the same modus operandi of gold chain snatching resorted to by the detenu. Panic is liable to be created in the process amongst the society at large.

The learned Government Pleader is certainly right in placing reliance upon the judgment rendered by the Supreme Court in **Ashok Kumar vs. Delhi Administration and Others**. The relevant principle has been called out in Para 17 of the said judgment in the following words:

What essentially is a problem relating to law and order may due to sudden sporadic and intermittent acts of physical violence on innocent victims in the metropolitan city of Delhi result in serious public disorder. It is the length, magnitude and intensity of the terror wave unleashed by a particular act of violence creating disorder that distinguishes it as an act affecting public order from that concerning law and order. Some offences primarily injure specific individuals and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. The question is of the survival of the society and the problem is the method of control. Whenever there is an armed hold-up by gangsters in an exclusive residential area like Greater Kailash, Kalkaji or Lajpat Nagar and persons are deprived of their belongings like a car, wrist-watch or cash, or ladies relieved of their gold-chains or ornaments at the point of a knife or revolver, they become victims of organised crime. There is very little that the police can do about it except to keep a constant vigil over the movements of such persons. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu cover a wide field and fall within the contours of the concept of public order.”

[emphasis is applied by us]

Further 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 tranquility 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 tranquility of the society undisturbed?”

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?”

We are certainly of the opinion that the repeated involvement in gold chain snatchings can develop into a public order issue though at the initial stages it might have a bearing only upon law and order. We are, therefore, of the opinion that formation of subjective satisfaction of the Commissioner of Police to detain a person who is repeatedly indulging in gold chain snatchings cannot be faulted on the scope. The activities indulged in by the detainee clearly mark a distinct feature contained therein. He is trying to take recourse to crime in such a manner that female petty shop keepers are targeted, so that, people would get shocked of such activities. His acts are such that the society at large would get panicked and scared of him. The even tempo of the society is sought to be disturbed in the process. Accordingly, we reject the contention of Sri G.L. Narasimha Rao that the activities of the detainee do not warrant exercise of power of preventive detention.

The learned counsel for the petitioner has contended that the Commissioner of Police could not have passed the order of detention for a period exceeding 3 months and he derived support for his contention from the phraseology used in the

proviso to sub Section 2 of Section 3 of the Act and he also relied upon the judgment rendered by the Supreme Court in **Cherukuri Mani's case (Supra 1)**.

We have very recently decided W.P.No.5168 of 2015 on 28.09.2015. In the course of that judgment, we have categorically pointed that an identically worded provision contained in the Maharashtra State Act has fallen for consideration before the Supreme Court in **Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another** and the Supreme Court rejected a similar contention canvassed before it in Para 31 of the judgment rendered in the above case. We have also noticed the Constitution Bench judgment rendered in **Puranlal Lakhanpal Vs. Union of India**, wherein the Supreme Court held that the scheme of the Act authorises a possible detention of more than 3 months. We have also noticed that both these judgments rendered by the Supreme Court earlier have not been adverted to in **Cherukuri Mani's case (Supra 1)**. Therefore, we have preferred to follow the Constitution Bench Judgment of the Supreme Court rendered in **Puranlal Lakhanpal's Case (Supra 6)** and the judgment of the Supreme Court in **Harpreet Kaur's case (Supra 5)**. For the same reasons, we reject the contention canvassed by the learned counsel in this regard.

However, as we have noticed the 9 instances which the Commissioner of Police has based his satisfaction upon are the events that took place in a span of 6 to 7 months between the middle of December 2013 up to the end of July 2014. Thereafter, the detenu was apprehended, and he was remanded to judicial custody and by several orders passed by the competent criminal courts, he was granted bail. It is not the case of the Commissioner of Police that the detenue was not complying with the conditions of grant of such bail or that he was misusing such liberty. The detention order was passed on 13.02.2015, which is nearly 6 ½ months away from the last of the events reported on 31.07.2014. Therefore, there was a loss of continuity in between the events and the order of detention. The instances relied upon for arriving at the subjective satisfaction must be proximately close to the order of detention and they cannot be far remote and removed (See Union of India Vs. Paul Manickam (2003 (8) SCC 342). In the instant case, the events are all far remote and removed to the order of detention.

We are, therefore, satisfied that this is a case where the order of detention should be set aside for this reason only.

Accordingly, the writ petition is allowed setting aside the detention order dated 13.02.2015 passed by the Commissioner of Police.

Consequently, miscellaneous petitions, if any, pending shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

07.10.2015

Note: L.R. Copy to be marked

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