

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE JUSTICE SMT. ANIS**

WRIT PETITION NO. 12928 OF 2015

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

This writ petition is directed against the order of detention dated 05.04.2015 passed by the Commissioner of Police, Hyderabad City, under Subsection 2 of Section 3 of the The Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (henceforth 'the Act').

The mother of the detainee filed this writ petition challenging the validity of order of preventive detention passed by the Commissioner of Police exercising the power available to him under Subsection 2 of Section 3 of the Act. It is set out in the detention order that the detainee was involved in three crimes, Crime No.202 of 2014, Crime No.289 of 2014 and Crime No.162 of 2014. The Commissioner of Police was satisfied that the violent anti-social activities indulged in by the detainee are creating a sense of fear, panic and insecurity in the minds of general public and hence, such activities are considered as prejudicial to the maintenance of public order. Accordingly, he passed the order of detention.

It is urged by the learned counsel for the petitioner that the detainee was prosecuting the four year B.Tech degree course from one of the private engineering colleges in the city and that he has been falsely implicated in the criminal cases and he was granted bail

in those criminal cases by the criminal court and without noticing the fact that the detenue was granted bail by the competent criminal court and that he has been satisfactorily complying with the conditions imposed by the court for granting bail and at any rate with a view to avoid unnecessary implication of the detenue in criminal cases, the residence of the family has been shifted from Dabirpura area to Tolichowki area and at any rate for the past six months no cases have been booked against the detenue and therefore the order of detention is not only illegal but excessively harsh and unjust and that it was depriving the liberty of the detenue.

It is also contended that the father of the detenue is employed in Saudi Arabia and that the petitioner's mother was being taken care of by the detenue as she was not maintaining good health and that if the detenue is not released from detention, it will become a case of hardening the detenue due to the presence of other undesirable elements in the prison and in such a case the damage and hardship would become mostly irreversible.

The learned Government Pleader for Home Sri Venugopal has pointed out to the nature of activities reported against the detenue, which have been taken into consideration by the Commissioner of Police. The learned Government Pleader would point out that Crime No.202 of 2014 relates to an event that took place on 19.06.2014 wherein the complainant Sri Habeeb Osman S/o Habeeb Hussain who was a resident of A.C. Guards locality, Hyderabad, was informed by a friend of his that some people were waiting at nearby Taiba Hotel to beat him up. Hence, the complainant and his friend went to Taiba Hotel to enquire about the same and when they were

returning from Masabtank area finding none at the Taiba Hotel, when they reached Mahavir Hospital at about 00:00 hrs, Ahmed Hussain and his associates attacked the complainant and his friend with deadly weapons causing serious bleeding injuries with an intention to kill them. The crowd present at that hour near the Mahavir Hospital was terrified and consequently neither the passersby nor the attendants of the patients of the hospital, which is one of the crowded hospitals in the city, came to the rescue of the victims, but remained to be mute spectators. The accused (the detainee) was arrested on 21.06.2014 and he was remanded to judicial custody and was enlarged on bail on 16.07.2014. In another two months time thereafter, on 24.09.2014, the complainant Sri Seerala Prem Kumar, resident of Chilkaiguda, Secunderabad was proceeding along with his girlfriend towards Langer House area in a car to meet another friend. At about 19:00 hrs, when they reached Mehdiapatnam 'X' Roads, the complainant was obstructed by the detainee and made enquiries about the friend of the complainant who was found driving the car and attacked the complainant causing injuries. The complainant somehow managed to escape, but however, the accused have chased them upto Ayodhya 'X' Roads in Lakadikapool area and broke the glass panes of the car, dragged the complainant out of car, forcibly took him to Anupama Printers, Shanti Nagar area and beat him severely. The learned Government Pleader would point out that Ayodhya 'X' Roads is nearly 3 miles away from Mehdiapatnam 'X' Roads and thus the activities of the accused in the case have really frightened the passersby and onlookers and thus created panic in the locality. The accused-Hyder Khan (detainee) was arrested on 24.09.2014 and was remanded to judicial custody and he was enlarged on bail on 27.09.2014. In less than a month

thereafter, on 25.10.2014, one Mohd. Taher Younus who carries on Western Union Business, after closing his office, was proceeding to his house by carrying cash of Rs.4,00,000/- in the dickey of his Honda Activa two wheeler and on the way at about 21:10 hrs, when he reached near Quli Qutub Shah Urban Development Authority Office, he was attacked by Ahmed Hussain and his associates and looted the cash from him. The way this offence has been committed, terrified the people, as it happened at about 9:10 PM and because of the fear and panic, no one of the locality came to the rescue of the victim. The accused Hyder Khan, the detainee herein was arrested on 22.11.2014 and the stolen cash to the extent of Rs.3,67,000/- was recovered from his possession and he was remanded to judicial custody. Subsequently, he was released on bail on 07.01.2015. The learned Government Pleader for Home would submit that the frequency of commission of offences, one after the other in quick succession and the manner in which the offences were committed has not only terrified the residents, but was in fact had its impact upon the even tempo of the society as its tranquility has been disturbed. The order of preventive detention therefore is justified. The learned Government Pleader further pointed out that, at the stage when the order was passed by the Commissioner of Police under Subsection 2 of Section 3, the subjective satisfaction of the detaining authority is what matters. The learned Government Pleader would point out that at such a young age, the ghastly crimes which terrified the society are committed and if such criminal activities are not curtailed, the detainee would become emboldened to indulge in at more terrifying crimes shattering the public order and peace completely. The learned Government Pleader for Home would point out that the detainee has neither fear nor respect for law. He would

also point out that this Court would not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds and that the Court would not substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. He would further urge that sufficiency of grounds of detention is not a factor for the Court to take into account or consideration. But it is only left to the subjective satisfaction of the detaining authority. The dangerous activities indulged in by the detenue deserve measures to be taken for preventing regular repetition of such activities.

Section 2 of the Act defined various expressions. The expression 'goonda' as defined in Section 2(g) 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.

So far as the criminal cases that are booked against the detenue allege that he has committed offences under Sections 307, 323, 341 & 397 of Indian Penal Code amongst other offences. These offences fall in Chapter XVI or Chapter XVII, as the case be. Hence, the expression 'goonda' is attracted to the detenue.

The expression 'acting in any manner prejudicial to the maintenance of public order' is defined in Section 2(a). It means, when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.

The Supreme Court had drawn the distinction between area concerning the law and order and the public order in the following cases:-

Arun Ghosh vs. State of West Bengal^[1]

“.....It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.....A large number of acts directed against person of individuals may total up into a breach of public order.....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? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

Haradhan Saha vs. State of West Bengal^[2]

“19. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent.”

And further, the Supreme Court has clearly spelt-out in

Subramanian vs. State of Tamil Nadu^[3] that if the subjective satisfaction of the detaining authority is precise and rested upon the

grounds, which are relevant, it is not open to the Court to substitute its opinion to that of the detaining authority.

If a person with least regard for the consequences and without any respect to law, commits an offence right opposite to a busy hospital causing bleeding injuries on a couple of individuals and that too at the dead of the night, such an event will certainly have greater and lasting effect on the minds of the onlookers. Mahavir Hospital is one of the leading charitable hospitals in the city and consequently, is considered to be a crowded hospital. Even during the dead of the night, patients are brought for treatment including trauma and emergency cases. It is not a sleepy locality, for it to slip into the calmness of the night. If, at that hour, someone commits an act of assault leading to bleeding injuries on a couple of people, such an event cannot pass-off as any other ordinary crime committed due to the animosity between two sets of people. Similarly, if two unknown and unsuspecting people are proceeding in their car, and if they were stopped by a total stranger and then a quarrel erupts resulting in inflicting certain injuries on the stranger by the accused and in spite of the same, the stranger tries to escape from the scene by beating a retreat in his car and if he were to be chased for miles together on a fairly very busy road at about 07:00 PM in the evening and if he were to be caught few miles away from the first scene of incident and then his car gets damaged in an attack unleashed and the frightened driver is removed from his car and taken to a nearby place and bashed up, such events are bound to keep the mouths of all people open in great disbelief. It is alleged against the detainee that he has chased the car of the stranger from Mehdipatnam 'X' Roads right back up to Ayodhya 'X' Roads, a distance of nearly 3 kms. It is a matter of common

knowledge that the road between Lakadikapool to Mehdipatnam is a very busy road passing through not only commercial establishments on either side of the road, but also certain residential localities. The very fact that at 7:00 PM in the evening, no one has come to the rescue of the victim would speak volumes of the fear unleashed by the accused. The severity of the incident distinguishes it from an ordinary law and order problem. The third incident cited and relied upon by the Commissioner of Police is in fact a worst case. A businessman is way laid around 9:10 P.M and was assaulted and he was looted Rs.4,00,000/- from him which he was carrying in his scooter dickey. Out of the said amount, nearly Rs.3,67,000/- has been recovered from the detainee. These kind of incidents will set-off the panic button in the society and the security fear and concerns of the society would be raised instantaneously. People will feel threatened that they are no longer secure if they were to carry back home cash earned/collected during the day long business carried out by them. They would equally feel insecure to leave huge amounts of cash back at the business premises which may hardly or properly be secure. Therefore, we are satisfied that the order of preventive detention passed by the Commissioner of Police is rested upon appropriate consideration of the material brought before him. The criticism of the learned counsel for the petitioner that in all the three crimes, the accused was enlarged on bail by the competent Criminal Court and there was no allegation that he has violated the conditions subject to which the bail was granted to him and that this fact has escaped the attention of the detaining authority, is not based on correct facts. The order of detention itself records that the bail was granted by the competent Criminal Court in those cases. The Commissioner of Police was never in doubt that the accused was granted in all the three crimes bail by

the competent Criminal Court and that there was no allegation against them that the conditions of the bail so granted are violated. But, what the Commissioner of Police has noted was the frequency of commission of offences in quick succession and the terrifying manner in which they are committed, which will be having greater impact on the larger society. If, a young person is hence not prevented from indulging in any further such crimes, the society at large will have to bear the brunt of it. It is for prevention of further indulgence, the order has been passed under Subsection 2 of Section 3 of the Act by the detaining authority. Therefore, we do not find any merit in the criticism launched by the learned counsel for the detainee.

But however, one last submission of the learned counsel for the detainee appealed to us. It is urged that the detainee was pursuing his four year B.Tech Course from a private engineering college in the city. He is now in the second year. If, he was preventively detained, he will not be in a position to pursue his academics and consequently it might even lead to his ultimately dropping out of the college. Such an event would result in ruinous and disastrous consequences. Even if the detainee were to change his attitude, he would still become a useless burden to the society. This apart, it is urged that the mother of the detainee was not keeping well and it is the detainee who is taking care of her. It is further urged that one of the uncle's of the detainee by name Sri Zafar Altaf S/o Mohd Altaf Ur Rahman who is working as Junior Assistant in the office of the Deputy Educational Officer, Khairtabad, Hyderabad, has come forward willingly to take care of the detainee properly. Sri Jaffar Altaf, it is stated that he is in service of the Government for the past 25 years. Therefore, it was urged that the detainee be released from detention subject to further

good conduct.

In this context, it will be appropriate to notice that Section 13 of the Act has provided for the maximum period of detention to be 12 months from the date of detention. The order of detention became effective on 07.04.2015, more than 4 ½ months has already gone by. Section 14 of the Act has clearly spelt out that without prejudice to the provisions contained under Section 15 of the Andhra Pradesh General Clauses Act, 1891, a detention order may, at any time, be revoked or modified by the Government notwithstanding the fact that the order of detention was passed by the officer mentioned under Subsection 2 of Section 3. Subsection 2 of Section 14 contained a caveat setting forth that the revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person, where fresh facts have arisen after the date of revocation or expiry of the earlier order of detention. Section 15 of the Act has brought forth that the Government may at any time direct that any person detained in pursuance of a detention order may be released for any specified period, either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time cancel his release as well. Subsection 2 of Section 15 also empowered the Government to require the detinue to enter into a bond with or without sureties, for the due observance of the conditions specified in the direction and any such person released shall surrender before the authority specified in the order directing his release. Subsection 4 of Section 15 makes it clear that a failure to surrender as specified in Subsection 3, upon conviction can result in punishment with imprisonment for a term which may extend to two years or with fine or with both. Subsection 5 of Section 15 makes it

clear that, if any person released under Subsection 1 fails to fulfill any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof. Thus, there is ample power for the State Government to consider granting a release subject to such terms and conditions as it might consider necessary and appropriate. Since, the detainee was stated to be pursuing his second year engineering degree course, subject to his attending the classes on a regular basis putting in not less than 80% of attendance and subject to his executing a bond for maintaining good and decent conduct and not to indulge in any further crime, and subject to any such further condition of reporting before the Assistant Commissioner of Police functioning under the control of Commissioner of Police, once in fortnight between 3:00 PM to 5:00 PM and also any Government Servant, who is related to the detainee undertaking to monitor the movements and conduct of the detainee, perhaps, the apprehensions about the detainee entertained by the Commissioner of City Police can be adequately addressed. Such measures, perhaps, can effectively prevent the detainee from repeating the past history. At the same time, it would save his academic career. In case, the detainee is seriously desirous of turning a new leaf and become an effective and useful citizen, an opportunity thrown towards him would help to go a long way. This apart, one of his relatives appears to be working as a government servant in the city. Therefore, an appropriate bond from him can also be obtained so that, the movement and conduct of the detainee can be vouchsafed by him.

In view of what has been noted above by us, the State Government will entertain an appropriate request to be made on behalf

of the detenue by his mother and consider the same objectively by taking the observations made by us into account and pass appropriate orders, as expeditiously as possible, preferably within a maximum period of 15 days from the date of receipt of such representation.

With this, the writ petition stands disposed of.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

24.08.2015
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note: copy in 3 days

[\[1\]](#) AIR 1970 SC 1228
[\[2\]](#) 1975 (3) SCC 198
[\[3\]](#) 2012 (4) SCC 699