

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

WRIT PETITION NO.40066 OF 2014

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

A Writ of Habeas Corpus is sought to quash the order of detention dated 10.10.2014 passed by the Commissioner of Police, Hyderabad, whereby Mr. Mohammed Ilyas Bin Habeeb Salam was detained under the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Durg-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (A.P. Act 1 of 1986).

Facts, to the limited extent necessary, are that an order of detention was passed, under Section 3(2) of A.P. Act 1 of 1986, on 10.10.2014 by the Commissioner of Police, Hyderabad City, recording his satisfaction, from the material placed before him, that Mr. Mohammed Ilyas Bin Habeeb Salam was a "Goonda" as defined under Section 2(g) of A.P. Act 1 of 1986; and with a view to prevent him from affecting adversely the maintenance of public order, the provisions of A.P. Act 1 of 1986 should be invoked to detain him in preventive custody. The Commissioner, in the exercise of the powers conferred on him under Section 3(2) of A.P. Act 1 of 1986 read with G.O.Rt.No.497 dated 02.09.2014, ordered that Mr. Mohammed Ilyas Bin Habeeb Salam be detained in preventive custody from the date of service of the order, and to be lodged in Central Prison, Cherlapally, Hyderabad. Mr.Salam was taken into preventive custody eleven (11) days thereafter on 21.10.2014 and, on the very same day, receipt of the order and grounds of detention were acknowledged by him. Thereafter the Government of Telangana, by G.O.Rt.No.836 dated 15.10.2014, approved the order of detention passed by the Commissioner. The matter was placed before the Advisory Board on 31.10.2014. The Advisory Board met on 25.11.2014, and Mr. Salam was produced before them on the very same day. The Advisory Board opined that there was sufficient cause for the detention of Mr. Salam. The Government of Telangana, by G.O.Rt.No.1235 dated 03.12.2014, confirmed the order of detention passed by the Commissioner of Police, and directed that the detention of Mr. Salam be continued for a period of

twelve (12) months from the date of his detention i.e., from 21.10.2014. The order of detention is under challenge, in this Writ Petition, on the following grounds.

1. As the power conferred on the Commissioner, under Section 3(2) of A.P. Act 1 of 1986, is only for a period of three (3) months, the Commissioner could not have passed an order of detention for a period exceeding three (3) months.
2. The Government failed to refer the matter to the Advisory Board within the time stipulated under Section 10 of A.P. Act 1 of 1986.
3. The acts alleged against Mr. Salam would, at best, constitute acts violating “law and order”, and not “public order”.

Sri M.M. Firdos, Learned counsel for the petitioner, would rely on the judgments of the Supreme Court in **Cherukuri Mani v. The Chief Secretary, Government of Andhra Pradesh**, and **Yumman Ongbi Lembi Leima v. State of Manipur**, in this regard.

On the other hand, the learned Government Pleader for Home would submit that Section 3(2) of A.P. Act 1 of 1986 only refers to the maximum period for which the power of detention can be delegated by the Government either to the District Magistrate or to the Commissioner of Police; it does not disable either the District Magistrate or the Commissioner of police from passing an order of detention exceeding three months; in any event, in the present case, the Commissioner of Police has not passed an order detaining Mr. Salam for a period beyond three months; the order of detention does not specify the period of detention at all; it is only after the Advisory Board opined that there was sufficient cause, for the detention of Mr. Salam, that an order was passed by the Government, in G.O.Rt.No.1235 dated 03.12.2014, continuing the detention of Mr. Salam for a period of twelve (12) months; the submission, that the matter was not referred to the Advisory Board within three (3) weeks, is not tenable; the allegation in the additional affidavit in this regard is vague; in any event, the records placed before this Court would disclose that the matter was placed before the Advisory Board on 31.10.2014 within ten (10) days after Mr. Salam was actually detained, under A.P. Act, 1 of 1986, on 21.10.2014; the grounds of detention disclose that the incidents, which necessitated an order of detention being passed, fall within the ambit of “public order” and not “law and

order”; the satisfaction of the Commissioner of Police, in detaining a person, is subjective; this Court would not sit in judgment over the satisfaction of the Commissioner on whether the person should be detained or not; and the incidents, referred to in the grounds of detention, would satisfy the requirements of the detenu having acted in such a manner as to justify the Commissioner reaching the satisfaction that his detention is necessary to prevent him from indulging in acts prejudicial to public order. Learned Government Pleader would rely on **Harpreet Kaur v. State of Maharashtra**, **T.Devaki v. Government of Tamil Nadu**, **Rameshwar Shaw v. District Magistrate, Burdwan** and **Subramanian v. State of Tamil Nadu**.

On the first submission regard the scope of Section 3(2) of the A.P. Act 1 of 1986, it is necessary to extract Section 3(2) and its proviso. They read thus:-

“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.”

It is no doubt true that a two judge bench of the Supreme Court in **Cherukuri Mani¹**, observed:-

“.....Proviso to Sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. It means that, **if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each.** The expression “**extent such period from time to time by any period not exceeding three months at any one time**” assumes significance in this regard.....” (emphasis supplied)

An identical provision, under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982, fell for consideration before a three-Judge Bench of the Supreme Court in **T.Devaki⁴**, and the Supreme Court held:-

“.....“Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. **The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression “the State 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” occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.....**” (emphasis supplied).

Following the three judge bench judgment of the Supreme Court, in **T. Devaki**⁴, a two-Judge Bench of the Supreme Court, in **Harpreet Kaur**³, while dealing with a similar provision under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981, observed:-

“.....A plain reading of the section shows that the State Government under Section 3(1), if satisfied, with respect to any person tht 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 empowr 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.....” (emphasis supplied).

It is evident from the aforesaid judgments of the Supreme Court in **T. Devaki**⁴, and in **Harpreet Kaur**³, that Section 3(2) of A.P. Act 1 of 1986 only deals with

delegation of powers, and has nothing to do with the period of detention of a detenu. Neither the three-Judge Bench in **T.Devaki⁴** nor the two-Judge Bench in **Harpreet Kaur³** was noticed by the two-Judge Bench of the Supreme Court in **Cherukuri Mani¹**. It is settled law that when a High Court is confronted with conflicting judgments of the Supreme Court, it is bound to follow the judgments of larger benches of the Supreme Court in preference to the smaller benches of the Supreme Court. (**Sakinala Harinath v. State of A.P.**) .As the judgment of the Supreme Court in **T.Devaki⁴** was rendered by a bench of three Judges, it is the law declared therein which binds the High Court, and not the law declared in the two-Judge Bench judgment of the Supreme Court in **Cherukuri Mani¹**, as the judgment in **T. Devaki⁴** was not brought to the notice of the two judge bench of the Supreme Court in **Cherukuri Mani¹**. The first contention of Mr. M.M. Firdos, therefore, necessitates rejection. It is also necessary to note that, in the present case, the Commissioner of Police has not prescribed the period of detention of Mr. Salam and it is the Government which, in the exercise of its powers under Section 12(1) of A.P. Act 1 of 1986, which has confirmed the detention and has continued his preventive custody for the maximum period of twelve (12) months as stipulated under Section 13 of A.P. Act 1 of 1986.

The second contention, urged on behalf of the detenu by Sri M.M. Firdos, Learned Counsel for the petitioner, is with regards the delay on the part of the Government in referring the matter to the Advisory Board. Section 10 of A.P. Act 1 of 1986 requires the Government, within three weeks from the date of detention of a person under the order, to place before the Advisory Board the grounds on which the order of detention has been made, and the representation, if any, made by the person affected by the order. While an order of detention was no doubt passed on 10.10.2014, the detenu was actually taken into preventive custody only on 21.10.2014. The three week period within which the Government was required to refer the matter to the Advisory Board would commence only from 21.10.2014 when Mr. Salam was actually detained, and not from 10.10.2014 when the order of detention was passed. In the present case, the matter was referred by the Government to the Advisory Board on 31.10.2014 less than two (2) weeks from the date of detention of Mr. Salam on 21.10.2014.

While a plea in this regard was no doubt taken in the additional affidavit, it

was bereft of details. The counter affidavit also does not disclose the date on which the matter was referred to the Advisory Board. Learned Government Pleader for Home would submit that it is because the additional affidavit was vague that these details were not furnished in the additional counter affidavit. He would, however, place the original records before this Court in support of his submission that the matter was indeed referred by the Government to the Advisory Board on 31.10.2014. The record placed before us not only shows that the Government had referred the matter to the Advisory Board on 31.10.2014, but it also contains the acknowledgment of all the three members of the Advisory Board on 31.10.2014 to the effect that the matter of Mr. Salam had been referred to them. This contention, of Mr. M. M. Firdos, also necessitates rejection.

The third contention urged on behalf of the detenu, by Sri M.M. Firdos, Learned Counsel for the petitioner, is that A.P. Act 1 of 1986 can only be invoked for acts prejudicial to “public order”, and not for acts prejudicial to “law and order”. It is no doubt true that Section 3(1) read with Section 3(2) enables an order of detention to be passed only to prevent a person from acting in any manner prejudicial to the maintenance of public order. The grounds of detention refer to three offences which Mr. Salam is alleged to have committed. They are:

“(1) Cr.No.410/2012, U/s. 147, 148, 302 r/w 149 IPC of Golconda PS.

On 24.12.2012, Miss. Najma Begum, D/o. Shaik Moinuddin, r/o. H.No.9-8-412/A, Golconda, Hyderabad lodged a complaint in Golconda Police Station stating that Mohd. Ilyas Bin Habeeb Salam and his associates attacked her nephew Nawaz with deadly weapons at Golconda, causing injuries. He was immediately shifted to Olive Hospital for treatment and while undergoing treatment he succumbed to injuries. In this case the accused Mohd. Ilyas Bin Habeeb Salam was arrested on 26.11.2012 and remanded to judicial custody. He was released on bail on 23.09.2014. The case was charge sheeted on 13.07.2012 and is PT vide PRC.No.30/2014.

(2) Cr.No.119/2013, U/s. 354, 323 r/w 34 IPC of Golconda PS.

On 03.05.2013, Smt. Anwari Begum, W/o. Tahseen, aged 38 years, r/o. H.No.9-8-183, Beside Post Office, Golconda, Hyderabad lodged a complaint stating that on 03.05.2013 at about 18.30 hrs the accused Mohd. Ilyas Bin Habeeb Salam, who murdered her son Nawaz in the year 2012 is abusing her in filthy language and trying to outrage her modesty forcing her to compromise the murder case. When she refused, he beat her, threatened her of dire consequences to kill her. In this case the accused Mohd. Ilyas Bin Habeeb Salam was arrested on 06.05.2013 and remanded to judicial custody. He was released on bail on 06.05.2013. The case was charge sheeted on 16.05.2013.

(3) Cr.No.353/2014, U/s. 448, 506 IPC of Golconda PS.

On 12.08.2014 at 11.30 hrs the complainant Shaik Asker, S/o.Shaik Zameeruddin, r/o. H.No.9-8-412/A, Opp.Post Office, Golconda Fort, Hyderabad lodged a complaint in Golconda Police Station stating that on 11.08.2014 at about 12.20 hrs while he was standing near his house, one Tauseef came on a bike bearing No.AP-09-BY-7516 and asked him to call his cousin Farhan to assist him to kill one Mohd. Ilyas Bin Habeeb Salam @ Ilyas Chaush who killed complainant's another cousin Nawaz. Tauseef also informed him that Mohd. Ilyas Bin Habeeb Salam @ Ilyas Chaush was sitting on "Katta", Langerhouse and chatting with one Raj. Tauseef insisted the complainant to call Farhan as he don't want to miss this chance to kill Mohd.Ilyas Bin Habeeb Salam @ Ilyas Chaush. When the complainant refused, Tauseef threatened him of dire consequences. The investigation revealed that the accused Mohd. Ilyas Bin Habeeb Salam hatched a criminal conspiracy through Tauseef to kill Farhan by calling him to "Katta", Langerhouse. The case is UI."

Learned Government Pleader would also draw our attention to the complaint filed by Mr. Shaik Asker to the Station House Officer, Golconda Police Station on 12.08.2014 in connection with the third incident. In the said complaint, Mr. Shaik Asker is said to have stated as under:-

"I submit that on 11.08.2014 at about 12.15 pm while I was standing nearby my house due to power cut, one Tauseef came to me on a bike bearing No.AP-09-BY-7516 and asked me to call my cousin Farhan. When I asked him why he wanted to meet Farhan, he said that one Ilyas Chaush, who is involved in the murder case of my another cousin Nawaz, was sitting under the Katta, Langerhouse, and talking with one Raj. Tauseef further informed me that he and some other persons are also against the said Ilyas Chaush, and they have also planned to murder Ilyas Chaush, and since Farhan was also against Ilyas, I was surprised and shocked and stated to him that I would not send Farhan, for committing such illegal things and also asked him to abstain from such illegal acts, but Tauseef insisted me to call Farhan, and that we should not miss this opportunity for killing Ilyas.

I submit that on his persistent insisting, I got suspicion that some wrong is there, suddenly my elder brother named: Qizer who was standing at a distance by me and was watching us, came to me and I brought the entire story to the knowledge of him and we both called my paternal uncle named: Jameel, and we all of them confronted the said Tauseef who admitted that Ilyas Chaush along with some others have conspired and planned to murder Farhan and in execution of their plan they have asked him to bring Farhan, to a scheduled place to murder him and he further stated that they have also threatened him that if he did not act as per their dictates, he would be murdered and as such for fear of his life, he came to our house to take Farhan so that Ilyas and others could murder him. He further said that Ilyas and other Chaush persons are waiting near Masjid-E-Aqsa, Dhankota, Golconda fort, Hyderabad, and they have made all preparations to murder Farhan."

These three incidents refer firstly to the murder of Mr. Nawaz on 24.12.2012; secondly to outraging the modesty of Smt. Anwari Begum on 03.05.2013, and her being abused in filthy language; and thirdly to the criminal conspiracy hatched to kill Mr. Farhan. It is not as if a solitary incident of "law and order" has been magnified as acts prejudicial to "public order". The Commissioner has recorded his satisfaction that the detention of Mr. Salam is necessary to prevent him from indulging in acts

prejudicial to the maintenance of public order.

In **Subramanian**⁶, the Supreme Court observed:

“.....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.....**” (emphasis supplied)

In **Rameshwar Shaw**⁵, the Supreme Court held:-

“.....It is true that the satisfaction of the detaining authority to which Section 3(1) (a) refers is his subjective satisfaction and so is not justiciable. Therefore it would not be open to the detenu to ask the court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not necessarily or reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of satisfaction of the detaining authority cannot be questioned in a Court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by Section 3(1)(a), vide *State of Bombay v. Atma Ram Sridhar Vaidya*.

It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not detained, he may act in a prejudicial manner, **and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person.** When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. **That is why this Court has held in *Ujagar Singh v. State of Punjab* {(1951) SCR 167} and *Jagjit Singh v. State of Punjab* {(1952) SCR 756} that the past conduct of antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.....**” (emphasis supplied)

The satisfaction recorded by the Commissioner of Police that the detention of Mr. Salam was necessary to prevent him from indulging in acts prejudicial to “public order” is based on three grave and serious incidents of murder, outraging the modesty of a woman and her being abused, and conspiracy to murder another person. The satisfaction of the Commissioner that Mr. Salam should be kept in preventive custody, based on the aforesaid three grounds which, when read together, constitute acts prejudicial to the maintenance of “public order”, does not suffer from any legal infirmity necessitating interference in proceedings under Article

226 of the Constitution of India. We see no reason, therefore, to interfere with the impugned order of detention.

The Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

8th October 2015

RRB