

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

AND

THE HON'BLE MRS. JUSTICE ANIS

+WRIT PETITION No.16943 of 2015

% Dated: 26.10.2015

BETWEEN

Hameeda Begum

W/o Sri Hamza Bin Omer @ Zaffer Pehalwan

R/o H.No.18-7-418/4, Rahmath Nagar

Yakuthpura, Hyderabad Petitioner

And

State of Telangana

Rep. by its Secretary

Home Department

Secretariat, Hyderabad and 5 others

... Respondents

! Counsel for the Petitioner : Sri Ch. Siddhartha Sarma

^Counsel for the Respondents : G.P for Home, State of Telangana

<Gist:

>Head Note:

? Citations:

1. AIR 1966 SC 740
2. (1969) 2 SCR 635 = (AIR) 1970 SC 852
3. (1970) 3 SCC 746
4. (1972) 3 SCC 831
5. AIR 1972 SC 1749
6. AIR 1975 SC 1215
7. 1982 (2) SCC 403

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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WRIT PETITION No.16943 of 2015

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

This writ petition is instituted by the wife of the detenu challenging the validity of the orders passed by the Commissioner of Police on 28.05.2015 preventively detaining her husband by name Sri Hamza Bin Omer @ Zaffer Pehalwan S/o Omer Bin Mohd.

The Commissioner of Police, Hyderabad City, in exercise of power available to him under Sub Section 2 of Section 3 of 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'), passed the order on 28.05.2015 for preventively detaining Sri Hamza Bin Omer @ Zaffer Pehalwan S/o Omer Bin Mohd., aged about 62 years R/o Rahmath Nagar, Yakuthpura, Hyderabad. In the grounds of detention passed on the same day, the Commissioner of Police has referred to 6 different instances of involvement of the accused in one crime or the other, for purpose of recording his subjective satisfaction that the detenu answers the description of 'goonda' as defined by

Section 2(g) of the Act and that he deserves to be detained to prevent him from indulging in similar acts any further.

With a view to prevent the Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers from indulging in dangerous activities prejudicial to the maintenance of Public Order, the State Legislature enacted the 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 Chapter XVII IPC provided for various offences against property, while Chapter XXII IPC dealt with the offences relating to criminal intimidation, insult, annoyance. If one were to go by the detention order, the Commissioner of Police has clearly brought out the activities indulged in regularly by the detainee, 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 in that the detainee was committing one offence or the other contained in Chapter XVI & XXII of IPC repeatedly and hence he has formed the opinion that the detainee was habitually committing or abetting the commission of such offences.

The first of the crimes which has been referred in the grounds of detention relates to crime No.86/2011 on the file of Rein Bazar Police Station. It appears that on 25.05.2011 while Sri S.Mohan Kumar, Inspector of Police, South Zone, Task Force along with staff, who were moving in Rehmath Nagar, Yakuthpura, Hyderabad, with a view to apprehend one Sri Moosa, an accused person in connection with crime No.55/2011 booked for offence under Section 302 IPC by Bhavanin Nagar Police Station, found the said accused near about a nala in the

locality. When the police made an attempt to get at him, he ran away therefrom and entered the house of the detenu. When the police tried to nab the accused Moosa, the detenu obstructed the police from entering his house and threatened the police with dire consequence at the point of a revolver. Thereafter, the detenu bolted the doors from inside and prevented the police from gaining entry into his house for apprehending Moosa. This act of the detenu, it is now asserted, created terror, panic and insecurity in the minds of the general public especially police personnel. It is stated that the detenu surrendered before the VIII Additional Chief Metropolitan Magistrate, Hyderabad on 29.06.2011 and was released on bail as per the orders of the I Additional Metropolitan Sessions Judge, Hyderabad. It is also stated that the accused has deposited his licensed revolver before the VIII Additional Chief Metropolitan Magistrate, Hyderabad. The criminal case S.C.No.449 of 2014 is now pending in this regard.

The 2nd incident related to crime No.69/2012 on the file of Rein Bazar Police Station. On 19.03.2012, the team of South Zone, Task Force were making efforts to apprehend the accused persons in connection with crime No.79 of 2012, the detenu is one such person, who is involved in the said crime. When the police reached the house of detenu at about 16.45 hours, the detenu ran inside his house and when the police party tried to chase him, the other accused obstructed the police party to apprehend him and thus, created barrier for the police party. The detenu moved from room to room and then managed to escape from the rear door of the house. In the meantime, the other accused persons including women folk tore their clothes and threatened the police personnel to implicate them in false cases. Thus, the act of the detenu created terror, panic and insecurity in the minds of the general public especially police personnel. The accused obtained anticipatory bail and thereafter surrendered before the Station House Officer, Rein Bazar on 03.07.2012 and was released on bail.

The 3rd incident related to crime No.79/2012 on the file of Kanchanbagh Police Station. It is set out that on 19.03.2012, the detenu and 14 of his associates formed themselves into an unlawful assembly armed with knives and daggers and assembled at God's power gym, Santoshnagar, Hyderabad, while the detenu along with others guarded outside the gym, some of his associates criminally trespassed into gym and brutally attacked Ahmed Ali Khan @ Ilyas Ali Khan, aged about 35 years, causing his instantaneous death for depositing evidence against the detenu in

the Court in connection with crime No.55/2011. The detenu was arrested on 27.03.2012 and was remanded to judicial custody. He was ultimately released on 06.06.2012 and the case is now pending trial vide S.C.No.606 of 2013.

The 4th incident related to crime No.264/2014 of Rein Bazar Police Station. It related to an incident that took place on 11.12.2014, on which day the police received information that the accused persons by name Sayeed and Ali, who are involved in crime No.219/2014 of Husanialam Police Station were taking shelter in the house of the detenu. Then police constable-3418, Sri Balram of Rein Bazar Police Station, Sri G.Ramesh, Inspector of Police, Sri Balaji, Inspector of Police, Hussainialam and Smt. P.Rukmini, Women Sub Inspector of Police of Women Police Station, South Zone and Sri Vijay Kumar, Sub Inspector of Police, Rein Bazar Police Station along with panchas and others rushed to the house of the detenu. At about 09.00 am when the main gate was knocked, the detenu arrived at the main gate and showing his footwear abused the police personnel in filthy language. Thus he obstructed them from discharging their legitimate duties. It is alleged that this incident created terror, panic and insecurity in the minds of the general public especially police personnel.

The 5th incident cited in the grounds of detention related to crime No.53/2015 on the file of Nampally Police Station. It is stated that on 02.03.2015, while Sri Mahaboob Ali Khan S/o Hasan Ali Khan, R/o. Boleshad Ki Dargha, Moghalpura, Hyderabad, was leaving the Court premises after attending to the trial of a case before the XII Additional Chief Metropolitan Magistrate, Hyderabad at about 11.45 hours, the detenu and his associates obstructed and threatened him with dire consequences and warned him not to depose against them. This incident which occurred in the Court premises is stated to have created terror, panic and insecurity in the minds of the general public, who were present in the Court.

The 6th incident cited in the grounds of detention related to crime No.66 of 2015 on the file of Chandrayangutta Police Station. It is stated that on 16.02.2015, the detenu sent his associate Mr.Samroz to the house of Smt. Habeeba Begum W/o. late Ahmed Ali Khan @ Iliaz, aged about 26 years, Occupation Private Teacher, R/o Phoolbagh, Chandrayangutta, Hyderabad. It is further stated that Mr. Samroz turned hostile in the murder case of the husband of Smt. Habeeba Begum. After trespassing into the house of Smt. Habeeba Begum/complainant, Mr. Samroz

threatened her with dire consequences and warned her to compromise with the detenu. Because of fear and panic created in the locality by the detenu and his associates, none of the locality people and passers-by came to the rescue of Smt. Habeeba Begum. A notice under Section 41(a) of Cr.P.C. was served on the detenu on 23.05.2015.

The cumulative effect of all these instances, caused satisfaction in the mind of the detaining authority that the detenu is indulging in dangerous activities habitually and hence, he needs to be detained to prevent him from indulging any further in such acts.

A careful analysis of the grounds of detention reveals the various instances which occurred between 25.05.2011 to 02.03.2015 in and around Hyderabad City. The detenu was involved in various instances of crime and hence, he has been booked in connection with those cases and several other criminal cases are also stated to be pending against the detenu. It is urged that except supplying the grounds of detention, no other supporting material has been supplied to the detenu and consequently, the detenu was prevented in making an effective representation for his release. It is stated that the detenu was elected twice as a Municipal Councillor and thus completed 10 years of tenure as a Municipal Councillor and he had also contested earlier assembly elections from the Yakutpura Constituency and stood 2nd in the elections. It is therefore urged that the present detention order has been passed at the instance of political rivals of the detenu. It is further urged that one of the daughters of the detenu was a Gynaecologist while another daughter was a practising lawyer. It is also urged that the son of the detenu was also a practising lawyer and thus, the detenu was hailing from a respectable family and he is implicated in one offence or the other for no good or valid reasons. Thus, the order of preventive detention is the result of improper and unjust exercise of power is the main plank of attack.

The Commissioner of Police has filed a detailed counter affidavit. It is urged that as per the expression 'goonda', contained in Section 2(g) of the Act a person who 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 (offences affecting human body) or Chapter XVII (offences against property) or

Chapter XXII of the IPC (criminal intimidation, insult and annoyance), such a person is a goonda. Since the detenu has been indulging in one offence or the other involving the human body and that he is also indulging in intimidation, the detaining authority is satisfied that recourse to ordinary criminal proceedings is not sufficient to deal with his prejudicial activities. It is with a view to prevent him from further indulgence in criminal activities which are prejudicial to the maintenance of the public order, the detention order has been passed. It is urged that in spite of the registration of the crimes and arrest, the detenu after coming out on bail has been habitually committing similar offences, which are prejudicial to the maintenance of the public order. It is further urged that the subjective satisfaction of the detaining authority is not to be interfered with lightly by the Court. Further, the entire material apart from the grounds of detention was furnished to the detenu. It is further set out that this writ petition is instituted on 12.06.2015 by which date the State Government passed orders through their G.O.Rt.No.1617, General Administration (Law and Order) Department dated 08.06.2015 approving the order of detention passed by the Commissioner of police on 28.08.2015. Therefore, it is urged that the contention canvassed to the contra by the petitioner is not sustainable.

Before dealing with the rival contentions, it is extremely important to bear in mind the principles relating to judicial review of orders of preventive detention set out by the Supreme Court in **Ram Manohar Lohia vs. State of Bihar**, speaking for Justice Bachawat also, Justice Hidayatullah (as the learned Chief Justice then was) pointed out the distinction between public order and law order in the following words:

“51.The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.”

A similar distinction between law and order and public order was also drawn in **Pushkar Mukherjee v. State of West Bengal**, and a caution was there expressed that the expression 'public order' in S. 3 (1) of the Preventive Detention Act, 1950 did not take in every infraction of law and that every disturbance of law

and order leading to disorder would not be sufficient invoke the extraordinary power
under such a detention law, unless the act in question was such as endangered or
was likely to endanger public order.

(emphasis is mine)

A Seven Judge Constitution Bench of the Supreme Court in **Madhu Limaye**
v. Sub-Divisional Magistrate again dealt with the question and it was observed:

“In our judgment the expression ‘in the interest of public order’ in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within ordre publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression ‘in the interest of public order’ is very wide.”

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?”

In **Kishori Mohan Bera vs. The State of West Bengal**, the Supreme Court in paragraph Nos.4 and 7 set out the principle as under:

“4. The Act confers extraordinary power on the executive to detain a person without recourse to the ordinary laws of the land and to trial by courts. Obviously, such a power places the personal liberty of such a person in extreme peril against which he is provided with limited right of challenge only. There can, therefore, be no doubt that such a law has to be strictly construed. Equally also, the power conferred by such a law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law.

7. In *Dr. Lohia v. State of Bihar*, (1966) 1 SCR 709 = (AIR 1966 SC 740) this Court explained the difference between the three concepts of law and order, public order and the security of the State and fictionally drew three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must

necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. These observations clearly bring out the distinction between each of the three concepts and the three imaginary concentric circles help to delineate the respective areas of the three concepts.

(Emphasis is mine)

In **Jatindra Nath Biswas's vs. The State of West Bengal**, the Supreme Court in paragraph No.6 held as under:

"It has been repeatedly, pointed out by this Court that even, if one ground, out of two or more is found to vitiate the subjective satisfaction of the detaining authority, the order of detention falls. In such a situation one does not know whether the authority would have thought it fit to pass an order of detention only on the basis of the surviving ground or grounds. The order stands vitiated if some out of many grounds are found to have no nexus with the object of detention."

[Emphasis is brought out]

In **Ashok Kumar vs. Delhi Administration**, a three Judge Bench of the Supreme Court, set out:

"13. The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the Act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case.

14. Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is

suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. It follows that any preventive measures, even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State.....

17. 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 grounds of detention have referred to six instances relating to involvement of the detainee in one serious crime or the other. When a contention was advanced on behalf of the petitioner that the necessary material has not been supplied to the detainee to enable him to make an effective representation against the preventive detention order, the learned Government Pleader has taken care to circulate the file which clearly brought out that the entire material enclosed to the grounds of detention, running to few hundred pages has been served on the detainee on 04.06.2015 at 01.00 p.m. The Jailor, Central Prison, Cherlapalli has attested the proceedings in this regard. Perhaps, the writ petitioner, wife of the detainee may not have had the benefit of knowing this factum and hence, such a contention has been canvassed at the Bar. We are satisfied that the entire material which is relevant for making an effective representation to the detainee has been made available to the detainee within the time span of 5 days provided as per Sub-Section (1) of Section 8 of the Act. Therefore, the contention canvassed in this regard must necessarily fail.

Similarly, the order of detention has been passed by the Commissioner of Police under Subsection 2 of Section 3 of the Act. He was obliged to place the entire material which prompted him to pass such an order of detention before the State

Government and seek their approval. Accordingly, the entire material has been placed before the State Government for its consideration and the State Government passed orders through their G.O.Rt.No.1617 General Administration (Law and Order) Department dated 08.06.2015 approving the order of preventive detention passed by the Commissioner of Police. This order of approval of the State Government dated 08.06.2015 has also been communicated to the detainee in prison. Therefore, the contention canvassed to the contra also fails.

However, an analysis of the grounds of detention brings out the following:

The first instance relates to Crime No.86 of 2011. It is stated that the police made an attempt on 25.05.2011 to apprehend one Moosa, accused in Crime No.55 of 2001 and the said Moosa ran away and took shelter in the house of the detainee and the detainee successfully prevented the police from entering his house by going to the extent of threatening the police with a revolver and out of fear of the dreadful acts of the detainee, none of the locality people/passers-by came to prevent the accused from his unlawful acts. This according to the detaining authority, created panic and insecurity in the minds of general public, especially police personnel. The grounds of detention thereafter proceeded to narrate that the detainee surrendered before the VIII Additional Chief Metropolitan Magistrate, Hyderabad on 29.06.2011 and he was released on bail by the said Court. It is further stated that the detainee has also surrendered his licensed revolver before the VIII Additional Chief Metropolitan Magistrate, Hyderabad. From the above, it becomes evident that in connection with the incident that took place on 25.05.2011 the detainee surrendered before the Court only a month later on. The next two incidents which are narrated in the grounds of detention have occurred on the same day, i.e. on 19.03.2012. It appears, a deadly attack was organized by the detainee on one Ahmed Ali Khan alias Ali Khan at Santosh Nagar, Hyderabad. In that connection, the detainee was arrested on 27.03.2012 and was remanded to judicial custody on 28.03.2012 and he was released on bail on 06.06.2012 and he was also charge-sheeted in connection with this case and Sessions Case No.606 of 2013 is now pending against him. On the same day, it appears, a police party arrived at the residence of the detainee at about 16:45 hours to apprehend him. The police party has been prevented from gaining entry into his house and thus were prevented from apprehending the detainee successfully. In the meantime, the detainee allegedly moved from room to room and quietly escaped from the rear door of the house. In this connection, the

detenue was granted anticipatory bail by the II Additional Metropolitan Sessions Judge, Hyderabad and accordingly, he surrendered before the Station House Officer, Rein Bazar Police Station on 03.07.2012 and was accordingly released. This incident also, according to the order of preventive detention created terror, panic and insecurity in the minds of general public, especially police personnel.

We have already noticed that the detenue was arrested on 27.03.2012 in connection with the brutal attack organized by him on 19.03.2012 and he was later on released on bail on 06.06.2012. Whereas, in connection with the second incident that took place on 19.03.2012, it is averred that the detenue surrendered before the police on 03.07.2012 after securing anticipatory bail from the Court. It means, the detenue has not been apprehended by the police either on 06.06.2012 or immediately thereafter when he was coming out of judicial custody upon grant of bail in connection with Crime No.79 of 2012. If it is, what the Commissioner of Police wants us to believe, that the acts of the detenue were truly creating insecurity in the minds of the police personnel also, then the conduct of the police personnel in not apprehending the detenue while he was coming out of judicial custody in connection with Crime No.79 of 2012 on 06.06.2012 remains unexplained and baffling.

The next instance relates to an incident which took place on 11.12.2014 at about 9:00 hrs when the police party arrived at the detenue's house upon coming to know that he is harbouring some other accused in connection with Crime No.219 of 2014 of Hussaini Alam Police Station at his house. It is stated that the detenue threatened the police personnel showing his footwear to them and abusing them in filthy language. This act also, according to the detaining authority created insecurity in the minds of police personnel.

Thus, four out of six instances which have been noticed by the Commissioner of Police for forming his subjective satisfaction, are stated to be concerning dreadful acts of the detenue which have created panic and insecurity in the minds of general public as well as police personnel. It will be difficult, for us to subscribe to the notion that there was a feeling of insecurity in the minds of police personnel. The police personnel, we feel, have perhaps retreated from the scene more for strategic reasons so that the general public will not view their action differently. It is more with a view to save the image of the police department, the police personnel on all the four occasions have retreated from the scene. If truly, they apprehended danger at

the hands of the detainee, they would have easily secured reinforcement of forces including the support from the armed constabulary. We are, therefore, of the opinion that the actions of the detainee complained of in the grounds of detention are the routine or regular crimes indulged in by him.

It is true that the detainee has been indulging in one serious crime or the other at regular intervals. It could also be true, as is reflected in the file, that the detainee may have been subjected to externment twice for his brazen law breaking activities. But those are all various infractions of law indulged in routinely by the detainee. May be, the Stat is not able to secure conviction as the witnesses cited by them are turning hostile and consequently the detainee must be escaping from the clutches of law. But those factors cannot be bundled and projected as affecting the public order. As was already noticed by us, every infraction of law is liable to be perceived as a disturbance to the law and order and it may lead to disorder. That might itself is not a sufficient ground for invoking the extraordinary power of preventive detention. The constitutional aim and guarantee of liberty of the individual has got to be protected carefully. In our view, four out of six grounds which have been narrated as creating panic and insecurity in the minds of even police personnel have vitiated the subjective satisfaction arrived at by the Commissioner of Police.

We are, therefore, of the opinion that the order of preventive detention cannot be sustained and accordingly, the detainee be set free immediately.

The writ petition stands allowed. No costs.

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

We place on record our sincere appreciation of the strenuous efforts of the learned Government Pleader for Home to convince us to come to the opposite conclusion which we have reached. His concerns, we believe, address the security risk of others and the police are really capable of taking good care of it otherwise as well.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

26.10.2015

Ska/sp

Note: LR copy