THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.7578 OF 2016

O R D E R
(*Per Hon'ble Sri Justice Sanjay Kumar*)

Mohammed Muzaffar @ Mujju, the son of the petitioner, was detained by the Commissioner of Police, Hyderabad City, under detention order dated 03.12.2015 passed in exercise of power under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (*hereinafter,* 'the Act of 1986'). The same was approved by the Government of Telangana under G.O.Rt.No.3297, General Administration (Law & Order) Department, dated 14.12.2015. Upon receipt of the report and opinion of the Advisory Board on preventive detention cases, the Government of Telangana confirmed and extended the said detention for a period of 12 months from 05.12.2015, the date of commencement of the detention, vide G.O.Rt.No.463, General Administration (Law & Order) Department, dated 24.02.2016. This G.O. is subjected to challenge in the present writ petition and a writ of habeas corpus is sought to produce and release the petitioner's son.

In the affidavit filed in support of the case, the petitioner claimed that her son was not involved in the cases cited as the grounds for detention and contended that in any event such offences would not constitute valid grounds for the detention. She asserted that such offences would come within the purview of 'law and order' and not 'public order'. She pointed out that the order of

detention was passed after a long lapse of nine months since the last of the alleged offences. She further contended that in the light of the law laid down by the Supreme Court in ***CHERUKURI MANI V/s. CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH***[1], the Government ought not to have extended the detention of her son for a period of 12 months in one stroke.

Perusal of the grounds of detention cited in support of the detention order dated 03.12.2015 reflects that the Commissioner relied upon four offences in which the petitioner's son figured as an accused. All these cases were registered under Section 379 IPC and related to a series of thefts of mobile phones in public places. As per the definition of 'goonda' under Section 2(g) of the Act of 1986, a person who commits or abets the commission of offences falling under Chapter XVII of the Indian Penal Code, 1860, relating to 'Offences against Property', would be covered thereby. Section 379 IPC falls in this chapter. In effect, in appropriate cases, offences under Section 379 IPC would qualify the accused therein as a 'goonda' for the purposes of the Act of 1986.

In his counter-affidavit, the Commissioner of Police, Hyderabad City, stated that in a span of six months, between 05.09.2014 and 09.03.2015, the petitioner's son was allegedly involved in as many as four property offences and was therefore a habitual offender, apart from being a 'goonda' within the meaning of Section 2(g) of the Act of 1986. The petitioner's son, along with his associates, was stated to be involved in committing thefts of costly mobile phones in public places, creating a sense of insecurity in the general public. The Commissioner pointed out that in two out of the four cases, viz., Crime Nos.164 of 2015 and

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[1] (2015) 13 SCC 722

171 of 2015 on the file of Afzal Gunj Police Station, the stolen mobile phones, being a Samsung Note-3 and a Model-X Pad QH cell phone, were recovered from the possession of the petitioner's son. He further pointed out that the petitioner's son was released on bail in all the cases. In addition thereto, commission of the offences in Crime Nos.164 of 2015 and 171 of 2015 on the file of Afzal Gunj Police Station was recorded by CCTV cameras installed at the scene of the offence and involvement of the petitioner's son was clearly evidenced thereby. The Commissioner stated that in these circumstances, he exercised power under the Act of 1986 so as to prevent the petitioner's son from continuing to indulge in activities prejudicial to public order.

One of the issues raised before us is that the offences involving the petitioner's son constitute a 'law and order' problem and do not impact 'public order'. The distinction between 'public order' and 'law and order' was brought out thus by the Supreme Court in ***ASHOK KUMAR V/s. DELHI ADMINISTRATION***[2]:

> '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……'

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[2] (1982) 2 SCC 403

Earlier, in ***RAM MANOHAR LOHIA V/s. STATE OF BIHAR***[3], the Supreme Court observed that 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. Mere disturbance of law and order leading to disorder, *per* the Supreme Court, may not necessarily be sufficient for action under the Defence of India Act but disturbances which subvert 'public order' are.

A similar distinction was drawn in ***PUSHKAR MUKHERJEE V/s. STATE OF WEST BENGAL***[4] in the context of preventive detention laws and it was pointed out that 'public order' did not take in every infraction of law and that every disturbance of 'law and order' leading to disorder would not be sufficient to invoke the extraordinary power under such a detention law unless the act in question was such as to endanger 'public order' or likely to do so.

In ***KANU BISWAS V/s. STATE OF WEST BENGAL***[5], the Supreme Court held that the test to be adopted in determining whether an act affects 'law and order' or 'public order' is to see whether it leads to disturbance of the current of life of the community so as to amount to disturbance of 'public order' or whether it merely affects an individual, leaving the tranquility of society undisturbed.

As pointed out by the Supreme Court in ***ASHOK KUMAR***[2], there may be some overlapping between the concepts of 'law and order' and 'public order' but it would essentially turn upon the potentiality of the acts in question to disturb the even tempo of the life of the community which would tilt the balance in deciding whether it would fall within a 'law and order' problem or constitute

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[3] AIR 1966 SC 740
[4] AIR 1970 SC 852
[5] (1972) 3 SCC 831

a 'public order' issue. Organized thefts of mobile phones in public places on a regular scale cannot be said to impact individuals alone as the society at large would be under a fear psychosis as to the security of their belongings in public places. The operations of an organized nature of the petitioner's son and his associates in allegedly committing thefts of costly mobile phones in public places would invariably stand apart from an individual case of this type, which may fall within the realm of a mere 'law and order' problem, and would affect normalcy in public places, thereby impacting 'public order'. The alleged activities of the petitioner's son therefore cannot be said to constitute a mere 'law and order' problem.

Reliance is sought to be placed by Sri G.L.Narasimha Rao, learned counsel for the petitioner, on the judgment of this Court in ***P.NAGA RAJU V/s. STATE OF TELANGANA***[6] and in particular, the observations therein that if the detenu was habitually committing crimes, the police ought to have opened a rowdy sheet against him to start with, so as to prevent him from committing such offences, and that if the activities of the detenu were really causing prejudice to the maintenance of public order, the police as a first step should open a rowdy sheet. We are however of the opinion that these observations do not constitute a condition precedent that unless a rowdy sheet is opened, an order of detention under the Act of 1986 cannot be passed against the person concerned. The letter of the law does not require that a rowdy sheet must precede an order of detention against a detenu. When the statute does not mandate so, it is not for this Court to legislate and add this 'condition precedent' to exercise of power under the Act of 1986. It may also be noted that the Division

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[6] W.P.No.34674 of 2015 dated 22.04.2016

Bench, having made the above observations, also stated that this Court does not intend to play down the gravity of the acts committed by the detenu therein but ultimately concluded that such activities were not prejudicial to the maintenance of 'public order'. This judgment is therefore of no avail to the petitioner.

Reliance is also sought to be placed by Sri G.L.Narasimha Rao, learned counsel, on the judgment of this Court in ***SMT. SANDYA BAI V/s. STATE OF TELANGANA***[7]. Therein, considering the facts, this Court set aside the order of detention imposing a condition that the detenu should leave the village and stay elsewhere for a period of one year and submit a written undertaking to that effect to the police authorities. This judgment however does not lay down any *ratio* and the relief therein was moulded by the individual facts of that case. That being so, it has no precedential value and is therefore of no help to the petitioner.

In ***HAMEEDA BEGUM V/s. STATE OF TELANGANA***[8], a Division Bench of this Court interfered with the order of detention on the ground that four out of the six grounds cited as the foundation for the order stood vitiated and therefore, the subjective satisfaction arrived at by the Commissioner of Police in that case could not be sustained. This case also turned upon facts. Reliance placed on the judgment in ***NAFEESA BEGUM V/s. STATE OF ANDHRA PRADESH***[9] is also of no avail to the petitioner as that was a case where the order of detention cited 'public peace' and 'law and order' as grounds, which this Court held to be unsustainable.

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[7] W.P.No.298 of 2016 dated 21.06.2016
[8] W.P.No.16943 of 2015 dated 26.10.2015
[9] W.P.No.28191 of 2015 dated 10.12.2015

In ***DARPAN KUMAR SHARMA V/s. STATE OF TAMIL NADU***[10], the Supreme Court was dealing with a case of preventive detention based on three offences arising under Section 379 IPC. However, only in one such instance, the detenu was alleged to have robbed in a public place. The Supreme Court therefore observed that there was no material to show that reach and potentiality of this single incident of robbery was so great as to disturb the even tempo or normal life of the community and on that ground quashed the detention order. This case is also distinguishable on facts and therefore does not help the petitioner.

The other ground urged by Sri G.L.Narasimha Rao, learned counsel, is as to proximity, in the context of the detention order being passed nine months after the last of the alleged offences. He would point out that in ***SMT. G.NEERAJA V/s. STATE OF TELANGANA***[11], a Division Bench of this Court opined that a detention order passed nearly six and a half months after the last of the alleged offences cannot be said to be proximate in terms of the law laid down by the Supreme Court in ***UNION OF INDIA V/s. PAUL MANICKAM***[12].

However, we find that ***PAUL MANICKAM***[12] did not deal with the issue of proximity at all and only dealt with the issue of consideration of the detenu's representation.

On the other hand, in ***RAJ KUMAR SINGH V/s. STATE OF BIHAR***[13], the Supreme Court observed that while adequacy or sufficiency of the grounds of detention is not open to challenge, relevance or proximity could be looked into to determine whether an order of detention was arrived at irrationally or unreasonably.

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[10] (2003) 2 SCC 313
[11] W.P.No.17192 of 2015 dated 07.10.2015
[12] (2003) 8 SCC 342
[13] (1986) 4 SCC 407

On facts, the Supreme Court found that involvement of the detenu therein in offences in March 1983 and thereafter, in March, 1984, was sufficient to justify the order of detention passed in January, 1985, as there was proximity between the incidents betraying the nature and tendency on the part of the detenu to commit such offences.

In the present case, the quick succession in which the four alleged offences were committed within a span of six months cannot be said to be irrelevant in coming to the conclusion as to the habitual nature of commission of such offences and merely because the last of such offences was about nine months prior to the passing of the detention order, it would not be sufficient in itself to invalidate the order of detention.

The last ground urged is in relation to the judgment of the Supreme Court in ***CHERUKURI MANI***[1]. Therein, the Supreme Court was dealing with exercise of power under Section 3(2) of the Act of 1986 and did not analyze Sections 12 and 13 of the said Act, which speak of the Government's power to confirm and extend the period of detention. As the present case involves exercise of such power by the Government of Telangana under G.O.Rt.No.463 dated 24.02.2016, this Court finds that this judgment does not advance the case of the petitioner.

On the above analysis, this Court finds that no grounds are made out to interfere with the detention of the petitioner's son in the present case as the subjective satisfaction arrived at by the Commissioner of Police, Hyderabad City, is not shown to be vitiated on any count.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

8TH SEPTEMBER, 2016

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