

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.P.No.29788 OF 2015

ORDER:

The petitioner prays for writ of Habeas Corpus for production and release of petitioner's husband Gunti Rajesh @ Raju. The petitioner challenges detention order No.12/PD/CCRB/CYB/2015 dated 04.06.2015 and G.O.Rt.No.2382, General Administration (Law & Order) Department, dated 27.08.2015, as illegal and contrary to Article 21 of the Constitution of India.

The averments, in brief, are that the petitioner is the wife of Gunti Rajesh (hereinafter referred as 'detenu'). On 04.06.2015, the 3rd respondent passed the order of detention against the detenu under the Telangana Prevention of Dangerous Activities of Bootleggers Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act 1 of 1986'). The 3rd respondent, for arriving at the subjective satisfaction under the Act, has referred to the following crimes:

1. Cr.No.551 of 2014 U/s 447, 427 IPC dated 22.07.2014 of PS Hayathnagar.
2. Cr.No.575/2014 U/s 447, 427 IPC dated 29.07.2014 of PS Hayathnagar
3. Cr.No.739/2014 U/s 420, 447, 427, 506 and 120 (B) IPC dated 19.09.2014 of PS Hayathnagar
4. Cr.No.970/2014 U/s 419, 420, 423, 406, 506, 448 r/w 34 IPC of PS Vanastalipuram
5. Cr.No.43/2015 U/s 447, 427 IPC and 3 and 4 of AP Land Grabbing (Prohibition) Act, 1982 dated 17.01.2015, Hayathnagar Police Station
6. Cr.No.121/2015 U/s 417, 363, 384, 376 IPC of Chaithanyapuri P.S.

In Cr.No.121 of 2015, the allegations against the detenu, in brief, are as follows:

"On 27.02.2015 at 2100 hrs Sri M.Ravindranath Reddy r/o Green Hills Colony, Kothapet, Hyderabad lodged a complaint stating that on 27.02.2015 at about 1230 hrs his sister by name M.Anusha, 23 yrs, Occu: Boutique Business was found missing from her house. In this regard a case in Cr.No.121/2015 under Woman Missing was registered and during the course of investigation the tower location of the missing woman was found at Ludhiana of Punjab, Munnar of Kerala. While so on 11.03.2015 evening hours the victim returned to home. The father of the victim by name Shyam Sundar Reddy came to P.S. and stated that the accused Gunti Rajesh married her with deceitful intention by concealing his previous marriages kidnapped her to various places i.e., Ludhiana of Punjab, Tirupathi, Madras and Munnar in Kerala and exploited her sexually several times by keeping her in different lodges. The SI Sri B.Kotiah incorporated the same in 161 Cr.P.C statement and altered the Section of law to 417, 363, 384, 376 IPC from Woman Missing.

In this case the accused Gunti Ramesh was arrested on 14.03.2015 and the Hon'ble Court remanded him to judicial custody. While the case is under

investigation, the victim woman M.Anusha has committed suicide on 18.03.2015 subject matter to Cr.No.33/2015 u/s 174 Cr.P.C of Nagarjuna Sagar P.S. of Guntur District. The case is UI for further investigation.”

The subjective satisfaction of 3rd respondent for passing the order of preventive detention reads thus:

“You are using the limitations in the law to scare public into submission by various methods by maintaining unsocial elements gang and terrorizing the innocent public. Due to your act of violence the general public is frightened even to complain or speak about your criminal acts or to depose evidence before the Hon’ble Court against you. Your acts are spreading disorder in the society.”

Thus you have been indulging in the acts of land grabbing by acting as a member of gang and committed Rape, Kidnapping, Extortion, Cheating, Criminal trespass and damage to the property with criminal conspiracy and criminal intimidation, land grabbing etc., thus you have created fear in the minds of the public and thereby you are disturbing the public order and tranquility in the area and your anti-social activities caused a feeling of insecurity in the minds of the public. The said activities are prejudicial to the maintenance of public order. Further, your acts have been adversely affecting the maintenance of public order and peace in the area.

As seen from the records you have been involved in (6) cases of 2014 and 2015. In the above cases in Cr.No.551/2014 you have compromised with the complainant, in Cr.Nos.575/2014 & 739/2014 you were arrested and remanded to judicial custody where you were released on bail by the Hon’ble Court, in Cr.No.970/2014 you have obtained anticipatory bail from the Hon’ble Court, in Cr.No.43/2015 is under investigation and in the remaining case in Cr.No.121/2015 wherein you were arrested and remanded to judicial custody on 14.03.2015 and facing trial from Central Prison, Cherlapally, R.R.District. Even the arrest made in the above cases under normal law, did not have any deterrent effect on you. Therefore, it is imperative to prevent you from acting in any manner prejudicial to maintenance of public order; but

I feel that recourse to normal law may not be effective deterrent in preventing you from indulging in further activities prejudicial to maintenance of public order in the area, unless you are detained by invoking the provisions under the Telangana Prevention of Dangerous Activities of Bootleggers Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.”

The 1st respondent, through G.O.Rt.No.2382 dated 27.08.2015, having regard to the opinion and report of the Advisory Board of Preventive Detention Cases, confirmed the order of detention.

The opinion expressed by the 1st respondent reads as follows:

“Government after careful examination of the entire record, observe that the detenu **Gunti Rajesh @ Raju, s/o Jangaiah, age: 34 yrs, Occu: Business, Caste: SC Madiga, r/o H.No.3-5-3, Gunti Jangaiah Complex, LB Nagar, R.R.District** has been habitually and continuously engaging himself in grave, violent and series of unlawful activities such as rape, kidnapping, extortion, impersonation, cheating, criminal trespass and damage to the property with criminal conspiracy and criminal intimidation, Land grabbing etc. (6) cases were registered against the detenu at Hayathnagar & Vanasthalipuram Police Stations, which were under the provisions of Chapter XVI, XVII and XXII of IPC, as such the activities of the individual fall under and within the meaning of ‘Goonda’ and ‘Land Grabber’ as defined under sec.2(g) and 2(j) of Act 1 of 1986. All the incidents mentioned in the grounds of detention clearly substantiate as to how the acts of the

detenu are prejudicial to the maintenance of public order. The Commissioner of Police, Cyberabad having satisfied that the activities of the detenu created a sense of fear, panic, and insecurity in the minds of the public and prejudicial to maintenance of public order and having felt that launching of the prosecution against the detenu would not have the desired effect in preventing him from acting in any manner prejudicial to the maintenance of public order, has passed the order of detention by invoking the provisions under the said act. The Advisory Board after review of the case, has opined that there is sufficient cause for detention of the detenu. As such the individual deserves the maximum period of detention, as provided under Sec. 13 of the Act.”

NOW, THEREFORE, after due consideration of the report of the Advisory Board and the material available on record, the Government, in exercise of the powers conferred under sub-section (1) of Section 12 read with Section-13 of the said Act, hereby confirm the order of Detention first read above, made by the Commissioner of Police, Cyberabad, as approved in the G.O 2nd read above, and direct that the detention of **Gunti Rajesh @ Raju, s/o Jangaiah, age: 34 yrs, Occu: Business, Caste: SC Madiga, r/o H.No.3-5-3, Gunti Jangaiah Complex, LB Nagar, R.R.District** be continued for a period of 12 (Twelve) months from the date of his detention i.e., 05.06.2015”.

Hence, the writ petition.

The petitioner challenges the order of detention by contending that the subjective satisfaction recorded by the

3rd respondent is without proper verification of all the cases and the detenu cannot and could not be treated as “Goonda” under Section 2(g) and “Land Grabber” under Section 2(j) of the Act. The cases which constituted the basis for detention order are compromised and the order of detention by reference to compromised cases is vitiated and liable to be set aside. The detenu was granted bail in Cr.No.121 of 2015 of Chaitanyapuri Police Station and the criminal cases, if any, are relating to the property claimed by the detenu and the circumstances warranting detention under Act 1 of 1986 are unavailable.

It is further alleged that Cr.No.121 of 2015 of Chaitanyapuri Police Station began as a woman missing case and the crime is converted into Section 354 IPC. The 3rd respondent, contrary to the material available on record, recorded an unsustainable finding for ordering detention. It is contended that the order of detention dated 05.06.2015 is against the principles of law laid down by the Hon’ble Apex Court in **CHERUKURI MANI V. CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH AND OTHERS**^[1] and is liable to be set aside.

In the above factual and legal matrix, the submissions of learned counsel for the petitioner are two fold viz., the recording of subjective satisfaction, *prima facie*, is laconic and vitiated; secondly the 3rd respondent could not have passed the order of detention for a period of 12 months from 04.06.2015 and prayed for setting aside the order of detention.

Learned counsel for petitioner relies upon the decisions reported in **RAGE MOUNIKA v.**

COLLECTOR & DISTRICT MAGISTRATE,

YSR DISTRICT, KADAPA AND TWO OTHERS^[2], MRS. T. DEVAKI v.

GOVERNMENT OF TAMIL NADU AND OTHERS^[3] & P.DURGA RAO v. STATE OF A.P AND ANR^[4].

The 3rd respondent filed counter-affidavit. The detenu has been habitually and continuously engaging in grave and series of unlawful activities such as rape, kidnapping, extortion, impersonation, cheating, criminal intimidation, trespass, damage to property with criminal conspiracy and criminal intimidation and land grabbing. The activities of detenu, which according to 3rd respondent are anti-social, are prejudicial to maintenance of public order and creating panic in the minds of people. It is further averred that the detenu is neither deterred by registration of crimes against him nor controlling his behaviour after being enlarged on bail. According to 3rd respondent, the order of detention is preventive in nature but not punitive and there is sufficient material for forming the subjective satisfaction.

On the second contention, the learned Government Pleader contends that the decision reported in ***Cherkuri Mani's*** case (1 supra) was considered by this Court in W.P.No.40066 of 2014 and W.P.No.5168 of 2015 along with the principles of law laid down by the Apex Court in **HARPREET KAUR [MRS] HARVINDER SINGH BEDI v. STATE OF MAHARASHTRA AND ANR^[5]**, ***T. Devaki's*** case (3 supra) and the power of detaining authority to pass the detention order beyond three months was considered and by following ***Harpreet Kaur's*** case (5 supra) and ***T. Devaki's*** case (3 supra), the contention on ***Cherkuri Mani's*** case (1 supra) was rejected. According to learned Government Pleader, ***T. Devaki's*** and ***Harpreet Kaur's*** cases have not been brought to the notice of the Apex Court in ***Cherukuri Mani's*** case and for this reason to appreciate the binding principle of law, this Court in W.P.No.40066 of 2014 and W.P.No.5168 of 2015 examined the case law and held that under Act 1 of 1986, the detention at the inception can be for twelve months.

We have perused the material available on record and noted the submissions of learned counsel appearing for the parties. The order of detention is primarily challenged on two grounds viz., that the subjective satisfaction recorded by the 3rd respondent is erroneous and vitiated; and that the order of detention cannot and could not be passed for a period of 12 months in view of the ratio in ***Cherukuri Mani's*** case. Excepting these two submissions, no other submission is canvassed by the counsel appearing for the petitioner.

After giving our anxious consideration, we are of the view that neither of these contentions is no more *res integra*.

For convenience, we would like to take up the second ground i.e., the power of 3rd respondent to pass an order of detention for a period of 12 months. The petitioner relies upon ***Cherukuri Mani's*** case (1 supra) and the 3rd respondent relies upon ***T.Devaki's*** case (3 supra) and an unreported judgment of this Court in W.P.No.22672 of 2015. We feel it convenient to refer to the unreported judgment which has considered the case law on the point and the relevant portion reads thus:

“We have heard the learned counsel for parties and perused the material available on record. The contention of learned counsel for the petitioner is that the order of detention for twelve months at a time is liable to be set aside, having regard to the ratio laid down by the Apex Court in Cherukuri Mani's case. On the other hand, learned Government Pleader places reliance upon Harpreet Kaur (MRS) Harvinder Singh Bedi's case and T.Devaki's case together with two unreported decisions of this Court where similar point was considered and held against the detenu.

We have perused the principles laid down in Harpreet Kaur (MRS) Harvinder Singh Bedi's case and T.Devaki's case and also the view taken by this Court in W.P.No.40066 of 2014 and W.P.No.5168 of 2015. In our considered view, the first contention raised by the petitioner is without merit and is accordingly, rejected.”

We have perused the principles laid down in ***Harpreet Kaur's*** case and ***T.Devaki's*** case and also the view taken by Division Benches of this Court in W.P.No.40066 of 2014 and W.P.No.5168 of 2015. The relevant portion in W.P.No.40066 of 2014 read as follows:

“It is evident from the aforesaid judgments of the Supreme Court in T. Devaki and in Harpreet Kaur, 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.Devaki nor the two-Judge Bench in Harpreet Kaur was noticed by the two-Judge Bench of the Supreme Court in Cherukuri Mani. 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.Devaki 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 Mani , as the judgment in T. Devaki was not brought to the notice of the two judge bench of the Supreme Court in Cherukuri Mani. 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 ”.

We are in complete agreement with the view expressed by this Court in these two writ petitions and in our considered view, the second contention raised by the petitioner is without merit and is, accordingly, rejected.

Therefore, for the view already taken, the latter ground of challenge to detention fails and

is accordingly rejected. The case of petitioner is that the subjective satisfaction recorded by the 3rd respondent is illegal and unsustainable and at any rate is vitiated due to non-consideration of material and the order of detention is liable to be set aside.

On the other hand, the Government Pleader for Home relies upon **HARDANSHAH v. STATE OF WEST BENGAL** ^[6], **RAMESHWAR SHAW v. DISTRICT MAGISTRATE, BURDWAN** ^[7] and **SUBRAMANIAN v. STATE OF TAMILNADU** ^[8] and contends that the power of preventive detention is collectively different from punitive detention and the power of preventive detention is a precautionary power exercised in reasonable anticipation and in a case it may or may not relate to an offence. Further, the opinion of the detaining authority is not examined by this Court as a Court of appeal and the Court examines whether there is sufficient material to form opinion that the detenu is required to be prevented from indulging in same and similar offences. The relevant judgments on which reliance is placed are as follows:

In **Hardanshah's** case (6 supra), the Constitutional Bench of the Apex Court held that the power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence.

In **Rameshwar Shaw's** case (7 supra), the Apex Court held that the reasonableness of the 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.

In **Subramanian's** case (8 supra), the Apex Court held that 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 substantiate 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.

The order of detention refers to same, similar and series of crimes from 22.02.2014 till 27.02.2015. The 3rd respondent referred to the *modus operandi* of the detenu and how after being enlarged on bail, the detenu is either intimidating the witnesses or securing settlements contrary to law, thereby stifling the process of law. While referring to Cr.No.121 of 2015, the detaining authority refers that the detenu has kidnapped one M.Anusha and the father of Anusha stated in the investigation that the detenu concealed his previous marriage, kidnapped M.Anusha to various places i.e., Ludhiana of Punjab, Tirupathi, Madras, Munnar and exploited her sexually by keeping her in different lodges. The detenu was arrested on 14.03.2015 and was later produced before the Magistrate having jurisdiction and the case is under investigation.

We are conscious that this Court while considering the satisfaction recorded by the detaining authority ought not sit as a Court of appeal, but *prima facie* considers whether there is material for forming the opinion to prevent a person from indulging in criminal offences etc. The petitioner, except raising that the subjective satisfaction is vitiated, has not pointed out any other circumstances warranting interference with the order of detention by this Court. Keeping the binding precedents in three citations relied upon by the State, we are satisfied that the petitioner failed to bring home this ground as well.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 07.04.2016
Lrkm

[1]) AIR 2014 SC 2019
[2] 2012 LAW SUIT (AP) 624
[3] (1990) 2 SCC 456
[4] 2011 CRI L.J. 3829
[5]) [1992] 2 SCC 177
[6] (1975) 3 SCC 198
[7] AIR 1964 SC 334
[8] (2012)4 SCC 699