

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION NO.7353 OF 2016

DATED:22-06-2016

Between:

Sadia Begum ... Petitioner

And

The State of Telangana
Represented by its Chief Secretary
Secretariat Buildings
Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. M.A.K. Mukheed

COUNSEL FOR THE RESPONDENTS: G.P. for Home (TS)

THE COURT MADE THE FOLLOWING:

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ORDER: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The detention of one Mr. Syed Nissar (hereinafter referred to as 'the detenu') under the provisions of sub-section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act'), is assailed in this writ petition, by the mother of the detenu.

2. We have heard Mr. M.A.K. Mukheed, learned counsel for the detenu, and the learned Government Pleader for Home (TS).

3. A perusal of the detention order shows that the detenu was detained on the allegation that he is a goonda involved in kidnapping for ransom, extortions, since 2014 in the limits of Mangalhat Police Station, Hyderabad City. In the grounds of detention, with regard to first incident, it is alleged that on 24.8.2014 at about 11.00 hrs., the detenu along with his associates came near to the push cart vendors, shop keepers, business establishments at R.K.Pet, Allabanda, extorted money ranging from Rs.500/- to Rs.1,000/- from each, as rowdy mamool, threatened them with dire consequences to pay rowdy mamool, and created terror, panic and insecurity in the minds of the vendors and shop keepers. The detenu was arrested on 20.11.2015 in connection with the said crime registered as Crime No.204 of 2014 of Mangalhat Police Station and remanded to judicial custody through P.T. Warrant.

In the second incident, on 20.8.2015 at about 14.30 hrs., the detenu along with his associates came to the residence of one Mr. Mohammed Mohibul Haque, R/o. Mangalhat, demanded money, for their boss Mr. Chand, kidnapped the son of brother of Mr. Mohammed Mohibul

Haque, aged about 18 years, demanded Rs.50,000/- to release the kidnapped person, beat them, later extorted cash of Rs.50,000/- from Mohibul Haque and snatched cash of Rs.5,000/- and a mobile phone from the kidnapped person. The detenu and his associates threatened Mr. Mohammed Mohibul Haque with dire consequences not to reveal the matter to Police. Out of fear of the detenu and dreadful acts of the detenu and his associates, the business people in the locality have been scared to do their business fearing kidnapping of their family members for ransom and the public order in the area was adversely affected. The detenu was arrested on 20.11.2015 in connection with the said crime registered as Crime No.177 of 2015 of Mangalhat Police Station and remanded to judicial custody.

In the third incident, the detenu along with his associates came to the residence of one Mohammed Shareef, R/o. Mangalhat, demanded money for their gang leader Mr. Chand, kidnapped the former, later they extorted an amount of Rs.70,000/- from Mohammed Shareef and threatened him with dire consequences not to reveal the matter to Police. Out of fear of the detenu and his associates people in the locality have been terrified and scared to do business freely fearing kidnapping and extortion of money, and that the public order in the area was adversely affected. The detenu was arrested on 20.11.2015 in connection with the said crime registered as Crime No.185 of 2015 of Mangalhat Police Station and remanded to judicial custody through PT warrant.

In the fourth and last incident, on 18.6.2015 the detenu along with his associates came to the work shop of one Mr. Kabir Ahmed, R/o. Mangalhat, demanded money for their leader Mr. Chand, kidnapped the cousin of Mr. Kabir

Ahmed, later they extorted an amount of Rs.70,000/- as rowdy mamool from Mr. Kabir Ahmed at the point of knife, and beat and threatened him with dire consequences not to reveal the matter to Police. Out of fear of the detenu and their dreadful acts, the business people in the locality have been scared to do their business fearing kidnapping of their family members and extortion of money by the detenu and that the public order in the area was adversely affected. The detenu was arrested on 7.10.2015 in connection with the crime registered as Crime No.186 of 2015 of Mangalhat Police Station and he was remanded to judicial custody through P.T. warrant.

Based on the above noted alleged activities, respondent No.2 has passed detention order dt.2.12.2015 wherein he has *inter alia* stated as under:

"I am aware that you were arrested on 20.11.2015 in Cr. No.177/2015 of Mangalhat PS and remanded to judicial custody. You are still in judicial custody in Cr. Nos.1) 204/2014, 2) 177/2015, 3) 185/2015 and 4) 186/2015 of Mangalhat PS. I apprehend that there is a genuine possibility of your release on bail and further on being released you would further indulge in the similar activities which are prejudicial to maintenance of public order."

4. The detention was approved by respondent No.1 by G.O. Rt. No.3266, dt.11.12.2015, and on the report of the Advisory Board dt.20.1.2016, respondent No.1 has also confirmed the detention order by G.O. Rt. No.452, dt.23.2.2016.

5. Learned counsel for the petitioner submitted that the allegations against the detenu are false, that as on the date of passing of the detention order, the detenu was in judicial custody in connection with Crime No.177 of 2015 and that therefore the detaining authority has failed to apply his mind and has arrived at a wrong conclusion that there was a likelihood of the detenu repeating the offences.

6. The law is well-settled that satisfaction of the detaining authority is subjective and that except in cases where mala fides are alleged the Court has no jurisdiction to examine the material based on which the subjective satisfaction is arrived at, in order to know whether the subjective satisfaction was properly arrived at or not (See *Ram Manohar Lohia v. State of Bihar*^[1] and *M.R. Subrahmaniyan v. State of Tamil Nadu*^[2]).

In *N. Meera Rani v. Government of Tamil Nadu*^[3], after considering the case law on the subject, the Supreme Court summarized the principle as under:

*“We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; **the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position.**”*

(emphasis supplied)

From the above reproduced portion of the judgment, it is clear that subsisting custody of the detenu by itself does not invalidate an order of the preventive detention and that if the detaining authority shows its awareness to the fact of subsisting custody and likelihood of his release, a detention order could be validly made to prevent the offender from indulging in his activities which are likely to be prejudicial to the public order after his release from

judicial custody. In that case, the Supreme Court has quashed the detention order on the ground that though the detention order read with its annexures indicate the detaining authority's awareness of the fact of detenu's jail custody at the time of making of the detention order, there is no indication in the order that the detaining authority considered it likely that the detenu could be released on bail.

8. In the instant case, from the portion of the order extracted hereinbefore, it is clear that respondent No.2 is not only aware of the fact that the detenu was in judicial custody, but he has also observed that there is a genuine possibility of release of the detenu on bail and that on being released he would further indulge in similar activities. Therefore, the impugned detention order does not suffer from the defect the Supreme Court pointed out in *N. Meera Rani* (3 supra).

9. For the aforementioned reasons, we do not find any illegality or procedural impropriety in the impugned orders of detention and confirmation. Hence, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.9391 of 2016 shall stand disposed of as infructuous.

REDDY, J

C.V. NAGARJUNA

G. SHYAM PRASAD,

J

22-06-2016

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[\[1\]](#) AIR 1966 SC 740

[\[2\]](#) (2012) 4 SCC 699

[\[3\]](#) (1989) 4 SCC 418