

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION NO.34674 OF 2015

DATED:22-04-2016

Between:

P. Naga Raju

... Petitioner

And

The State of Telangana
Rep. by its Chief Secretary
(General Administration Department)
(Law & Order), Secretariat
at Hyderabad
and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. G.L. Narasimha Rao

COUNSEL FOR RESPONDENT NOs.1 to 4: G.P. for Home (TS)

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

The petitioner is the father of one Peri Eswar Sai Prabhu (hereinafter referred to as 'the detenu'). Assailing order No.S.B.(I) No.283/PD/S-I/2015, dt.28.5.2015 of respondent No.2, whereby he has detained the petitioner's son in exercise of his powers 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 (for short, 'the Act'). The said order was confirmed, based on the recommendations of the Advisory Board, by respondent No.1, vide Memo No.181/L&O/A2/2015-3, dt.28.8.2015.

2. The petitioner has mainly raised two grounds in order to impeach the legality and validity of the orders of respondent Nos.1 and 2 referred to above, namely, (i) that the detention order, along with the grounds and the material, was not served on the detenu; and (ii) that even if the facts mentioned in the grounds of the detention are taken into account, the detenu does not fall within the definition of 'goonda' under Section 2(g) of the Act and that the alleged activities of the detenu cannot be said to be prejudicial to the maintenance of public order under Section 3(1) of the Act.

3. On behalf of the respondents, the Commissioner of Police, Hyderabad City, has filed a counter affidavit wherein he has *inter alia* denied the plea of the petitioner that the detention order or the grounds as well as supporting documents were not served on the detenu. He has averred that the detenu was served with the detention order and the grounds of detention, besides the documents

relied upon by the detaining authority, before the jail authorities and the same was acknowledged by the detenu on 30.5.2015, i.e., the date on which he was detained. As regards the act of detention, the Commissioner has justified the same by referring to the four criminal cases which were registered against the detenu, and described the activities of the detenu as prejudicial to the maintenance of public order.

4. As regards the first mentioned ground, the learned Government Pleader for Home (TS) placed before us the material, a perusal of which shows that the detenu has signed receipt dt.30.5.2015 acknowledging the receipt of the detention order dt.28.5.2015 along with the grounds of detention containing ninety-four pages. The learned counsel for the petitioner has fairly not disputed the authenticity of this receipt. Therefore, the first ground raised in the writ petition is without any merit.

5. As regards the second mentioned ground, we have carefully read the grounds of detention. This document contains reference to four criminal cases, namely, (i) Crime No.105 of 2012; (ii) Crime No.886 of 2014; (iii) Crime No.821 of 2014; and (iv) Crime No.106 of 2015. It is further mentioned therein that Crime No.105 of 2012 of Chikkadapally Police Station, registered for the offence under Section 385 IPC, ended in acquittal of the detenu. Out of the remaining three cases, the grounds of detention referred to Crime No.821 of 2014 and Crime No.106 of 2015 as substantive cases. Crime No.821 of 2014 of Madhapur Police Station, was registered for the offences under Sections 342, 363, 384 read with 34 IPC. The allegations against the detenu in that case are that on 30.11.2014 he along with his associates forcibly took the *de facto*

complainant - Mr. R. Rama Rao, resident of H.No.1-98/90/C, Aswairya Women's Hostel, Sai Nagar, Madhapur, Ranga Reddy District, in their four wheeler to the outskirts of the city, forcibly took his thumb impressions on blank papers to claim that the complainant has borrowed an amount of Rs.3.00 lakhs from them, that they have also called the complainant's wife over phone, demanded Rs.20,000/- and blank cheques, in order to release her husband, extorted an amount of Rs.5,000/- and two blank cheques, that while committing the offence the detenu and his associates created terror, panic and insecurity in the minds of general public and that public order was adversely affected.

With regard to Crime No.106 of 2015 of Amberpet Police Station, registered for the offence under Section 392 IPC, it was alleged that on the intervening night of 29/30.3.2015 while the *de facto* complainant Yerra Sudhir Raju, resident of Arunodhaya Colony, Nagole, Ranga Reddy District, was proceeding towards Kachiguda Railway Station, at about 00.30 hours, when the auto reached Golnaka New Bridge, Amberpet, the detenu along with his associates came on a bike, beat the complainant and robbed away his Nokia Mobile Phone and cash of Rs.8,000/- and the people, especially employees working in private firms, developed fear in their minds that they cannot carry cash on public streets freely, fearing robbers.

6. Section 2(g) of the Act defines the term 'goonda' as to mean, '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. Section 3(1) of the Act empowers the Government to make an order directing detention of

bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, if such detention is necessary for the said purpose.

7. In *Yumman Ongbi Lembi Leima v. State of Manipur*^[1], the Supreme Court, after referring to the case-law on the subject, held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof, that the State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order, and that an individual incident of an offence under the Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention.

8. In *T. Devaki v. Government of Tamil Nadu and Others*^[2], the Supreme Court while drawing distinction between 'law and order' and 'public order', held that any disorderly behaviour of a person in the public or commission of a criminal offence is bound to have some extent affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. The Supreme Court further held that there is a basic difference between 'law and order' and 'public order', as considered in *Dr. Ram Manohar*

Lohia v. State of Bihar^[3], *Pushkar Mukherjee v. State of West Bengal*^[4], and *Shymal Chakraborty v. Commissioner of Police, Calcutta*^[5]. With reference to the said cases, the Supreme Court explained that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquility and that it is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order. In this connection, the Supreme Court, in paragraph 18 of the report, referred to and relied upon its earlier decisions in *Nagendra Nath Mondal v. State of West Bengal*^[6], *Sudhir Kumar Saha v. Commissioner of Police, Calcutta*^[7], *S.K. Kedar v. State of West Bengal*^[8], *Kanu Biswas v. State of West Bengal*^[9], *Kishori Mohan Bera v. State of West Bengal*^[10] and *Amiya Kumar Karmakar v. State of West Bengal*^[11].

In *Harpreet Kaur (Mrs.) Harvinder Singh Bedi v. State of Maharashtra*^[12], the Supreme Court has prescribed the tests to determine whether the alleged acts affect 'law and order' or 'public order'. The Court held that it is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order' and that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It was further held that an order of detention under

the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order' and that the facts of each case have, therefore, to be carefully scrutinized to test the validity of an order of detention.

9. As mentioned above, of the four crimes, the detenu was acquitted in one crime and respondent No.2 has mainly relied upon two crimes. No doubt, the detenu, who is just 21 years of age and stated to be a student, appears to have taken to the habit of committing offences, such as, kidnapping and extortions, and he is involved in commission of four offences over a period of three years from 2012 to 2015. It is, however, significant to note that no rowdy sheet has been opened against the detenu as envisaged under the Andhra Pradesh Police Standing Orders. If the detenu was habitually committing crimes, we do not find any reason for the Police, not to open a rowdy sheet against him to start with to prevent him from committing the offences. If the activities of the detenu were really causing prejudicial to the maintenance of public order, the Police as a first step should have opened a rowdy sheet. Though we do not intend to play down the gravity of the acts committed by the detenu, we are of the opinion that these acts may be termed as disturbing law and order, more than causing breach of public order, a distinction which was well explained by the Supreme Court in a catena of judgments as referred to above. Since the respondents failed to prove that the activities of the detenu are prejudicial to the maintenance of the public order, the impugned detention order, as confirmed by respondent No.1, cannot be sustained.

10. In the result, the writ petition is allowed and the

impugned detention order, as confirmed by respondent No.1, is set aside. The detenu is directed to be released from the detention forthwith.

As a sequel to disposal of the writ petition, W.P.M.P. Nos.44541 and 44542 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA

REDDY, J

M.S.K. JAISWAL, J

22-04-2016

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Note: L.R. copies to be marked.
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[\[1\]](#) (1975) 3 SCC 198
[\[2\]](#) (1990) 2 SCC 456
[\[3\]](#) AIR 1966 SC 740
[\[4\]](#) (1969) 1 SCC 10
[\[5\]](#) (1969) 2 SCC 426
[\[6\]](#) (1972) 1 SCC 498
[\[7\]](#) (1970) 1 SCC 149
[\[8\]](#) (1972) 3 SCC 816
[\[9\]](#) (1972) 3 SCC 831
[\[10\]](#) (1972) 3 SCC 845
[\[11\]](#) (1972) 2 SCC 672
[\[12\]](#) (1992) 2 SCC 177