

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.25611 OF 2015

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

Mohd. Razvi alias Kafthan , son of late Mohd. Shafi, resident of Dhampur, Bijnor District of Uttar Pradesh State is the detenu.

One Karam Ahamad claiming to be his relative challenging the validity of detention order filed the instant writ petition under Article 226 of the Constitution of India seeking a writ of *Habeas Corpus*, and to quash the order of detention passed by the State of Telangana, represented by its Chief Secretary, who is respondent No.1 herein, in G.O.Rt.No.1810, General Administration (Law and Order) Department, dated 01-07-2015, and to release the detenu from the preventive detention by setting him free.

2. Initially, respondent No.4 - Commissioner of Police and Additional District Magistrate, Hyderabad, passed the order of detention on 21-04-2015 under 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 (Act No.1 of 1986) (for short 'the Act'), recording his satisfaction that the detenu has been habitually engaging himself in unlawful acts and indulging in house burglaries in public places creating large scale fear and panic among public and adversely affecting the public order, and that his activities are prejudicial to the maintenance of public order and, therefore, treating him as a 'goonda' as defined in Section 2 (g) of the Act, passed the said order while seeking approval of the Government.

i) By issuance of G.O.Rt.No.1250, General Administration (Law and Order) Department, dated 01-05-2015, the order of detention was approved by the Government. Thereafter, the State Government, by its order, dated 01-07-2015, made under Section 12 (1) read with Section 13 of the Act, has confirmed the order of detention agreeing with the opinion of the Advisory Board constituted under the Act and directed the detention of the detenu to be continued for a period of twelve (12) months from the date of detention i.e. 24-04-2015.

3. The grounds of detention would show that the detenu alleged to have committed house burglaries on 30-08-2014 along with his associates by breaking open the lock of Flat No.201, Krishnadhama Apartments House No.3-4-474, Lingampaly, Narayanguda, Hyderabad,

belonging to one Sri V.R. Joshi, and decamped with gold ornaments weighing about two (2) kilograms, in regard to which, Crime No.435 of 2014 under Sections 454 and 380 of Indian Penal Code, 1860 (for short 'IPC') was registered by Narayanguda Police Station.

i) The second incident relates to again another house burglary by breaking the latch of the house bearing door No.3-5-1/301, Ram Mahan Nivas, Ramkote, Hyderabad, belonging to Sri Satyanarayana Tanwar, along with his associates and committed theft of gold ornaments weighing about 260 grams and silver ornaments weighing about 1.2 kilograms, in regard to which, Crime No.195 of 2014 under Sections 454 and 380 of IPC was registered by Sulthan Bazar Police Station.

ii) Thus, these two instances have been considered by the detaining authority opining that a large section of people are adversely affected by the said incidents and were fear stricken and, thus, his activities are prejudicial to the public order. The detenu was arrested in Crime No.435 of 2014 of Narayanguda Police Station and sent for judicial custody on 30-03-2015.

iii) The order of detention was passed specifically mentioning the grounds that he was in judicial custody and the relevant material documents along with detention order and grounds of detention were served on the

detenu in his known language i.e., Hindi and also in English.

4. Adverting to the writ petition, at the outset, we intend to say that no specific ground has been raised by the petitioner. Paragraph No.7 of the affidavit filed in support of writ petition, since becomes relevant, in view of the submissions of learned counsel that except the contents mentioned in paragraph no.7, no other grounds have been agitated, we would like to extract the same which reads thus:

“7. I submit that the Police has served a copy of the detention order passed under Sub-Section 2 of Section 3 of Telangana Prevention of dangerous activities of Bootleggers, dacoits, drug offenders, Gundas, Immoral Traffic Offenders and Land Grabbers Act 1986. On 21-04-2015 and thereafter he has lodged with the Respondent No.4, he was not even allowed to meet his lawyer, he is having a minor son and he could meet him after lot of efforts who has obtained a copy of the dentition from him then only it was revealed that PD Act has been invoked against him. His only son is a minor and his wife is a Parda Nasheen lady who has never stepped out of the house as such I am constrained to file a Writ Petition on his behalf as I am the son and brother of Md. Rizvi.”

5. Respondent No.4 filed its counter on his behalf and on behalf of the other respondents, referring to what

has been mentioned in the detention order and the grounds of detention, which, in our view, is unnecessary to advert to herein. Besides the same, respondent No.4 states that the detenu and his associates belonging to State of Uttar Pradesh, frequently had been coming to Hyderabad and committing theft of gold, silver ornaments and cash by moving in posh localities and selecting locked houses and later committing thefts, and the detenu has even made confession giving relevant details stating that they have committed two house burglaries in Hyderabad City and three house burglaries in Tirupathi Town of neighbouring Andhra Pradesh State.

i) He has also given the details of house burglaries in regard to which, crimes have been registered by the Station House Officers of concerned police stations in Tirupathi as Crime Nos.1 of 2014; 2 of 2014 and 436 of 2014.

ii) It is stated that the petitioner maintained silence without divulging the name of one of the accused involved in committing the house burglaries along with the detenu, who said to have released on bail. It is stated that the detenu and one more accused was detained under the Act. It is stated that the son of the detenue - Sohail, was present at the time of review of the case before the Advisory Board on 02-06-2015 and, thus, adequate was

afforded to make representation before the Authority and, therefore, the contention that no opportunity to challenge the detention order before the Competent Authority was afforded and he had no access to a lawyer is untenable.

iii) While referring to the object of Law of Preventive Detention, respondent No.4 stated that the activities of the detenu attract the term 'goonda' as defined under Section 2(g) of the Act, and the reasons mentioned in the grounds of detention for passing the order detaining him to prevent from disturbing the public order as the recourse to normal Criminal proceedings did not have the desired impact.

6. Heard Sri M.A. Mujeeb, learned counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

7. Though, no specific ground is agitated in the affidavit and no reply affidavit or additional affidavit has been filed by the petitioner, still, the learned counsel while submitting that even, a post card written by the detenu is being construed as a *habeas corpus* petition. He has submitted certain grounds, which we may now state, both, the submission as well as the authority, on which, reliance was placed.

i) His first submission is that the detenu is not a habitual offender, since the detention order speaks about only two (02) cases registered against him and places

reliance on the judgment of the Hon'ble Supreme Court in **Ayub alias Pappukhan Nawabkhan Pathan v. S.N.**

Sinha and another^[1]. He relies on the observations of the Apex Court contained in paragraph No.5 in the context of explaining the meaning of expression 'habitually'. In the said decision, the detenu was termed as 'dangerous person' attracting the definition in Section 2(c) of the Gujarat Prevention of Anti-social Activities Act, 1985.

While stating that a person is said to be a 'habitual criminal', who by force of habit or inward disposition is accustomed to commit crimes, the Apex Court quoted its earlier judgment in **Vijay Narain Singh v.**

State of Bihar^[2] in explaining the meaning of word 'habitually' thus:

“The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions.”

It is, therefore, the submission of the learned counsel that there is no material at all showing that there has been thread of continuity stringing together similar repetitive acts and, therefore, the order of detention vitiates. In the

same context, he would submit that the order of detention does not disclose that the detenu was released on bail and is continuously repeating the offences and general law is not sufficient for him for recording satisfaction by the detaining authority, and he places reliance on the decision rendered by the Hon'ble Supreme Court in **K. Nageswara Naidu v. Collector and District Magistrate, Kadapa, Y.S.R. Kadapa District, Andhra Pradesh**^[3]

ii) The learned Government Pleader's submission has been that when no ground at all has been raised in the affidavit, the very request of the petitioner has to be thrown out at the threshold. Even otherwise, we would like to state that the expression of the Hon'ble Apex Court that it is the impact of the act and not the number of infractions which is relevant in ordering preventive detention by the authority concerned as held in **Union of India and another v. Chaya Ghoshal (Smt) and another**^[4]. In that context, the Hon'ble Supreme Court observed in paragraph No. 23 thus:

“23. So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not the number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran to crores of rupees, as alleged by the

Detaining Authority.

The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's conclusions in this regard are therefore not sustainable.”

iii) His submission that the offences in both the crimes even if construed to be true, still, account for law breaking activities but not infraction of preventive detention laws and the ordinary law will take care of those offences, and places reliance on the decision rendered by a Hon'ble Division Bench of this Court in **Hameeda Begum v. State of Telangana**^[5], placing emphasis on the observations thus:

“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 State 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.”

8. We may state that when no specific plea, nor objection to the order of detention is raised in the affidavit, it is unnecessary for us to consider the said submission at all. However, in matters falling under the provisions of the Act, facts and circumstances have to be examined on case-to-case basis. We find from the counter affidavit filed by the detaining authority that the detenu has committed two incidents falling within the territorial limits of State of Telangana and his activities are not just confined to these two incidents alone, but also extended to the territory of State of Andhra Pradesh, since such similar incidents numbering (03) alleged to have committed by the detenu in the houses within the limits of Alipiri Police Station and Tirupathi (East) Police Station, which details have also

been narrated. In fact, these grounds touch the subjective satisfaction recorded by the detaining authority. We would like to state that the reasonableness of satisfaction of the detaining authority cannot be questioned in a Court of law and the adequacy of material, on which, the said subjective satisfaction purports to rest, cannot be examined in a Court of law as observed by the Hon'ble Supreme Court in **Rameshwar Shaw v. District Magistrate, Burdwan**^[6], and the Court cannot substitute its own opinion for that of detaining authority, when the grounds of detention are precise, pertinent and proximate, as held by the Hon'ble Supreme Court in **Commissioner of Police v. C. Anita (SMT)**^[7].

9. The submissions of the learned counsel that the detenu is not a 'goonda'; and that there is no disturbance of public order; and that there is no fear factor, he places reliance on the decision of this Court rendered by the Hon'ble Division Bench in **Smt. Vasnthu Sumalatha v. State of Andhra Pradesh, rep.by its Chief Secretary, Hyderabad**^[8]. We opine that these submissions are without any merit, more particularly, when nothing is forthcoming in the direction of attributing *mala fides* to the detaining authority.

i) Further submission made by the learned counsel for the petitioner is that in a single stroke order for twelve

(12) months detention was passed, which is not maintainable, and he places reliance on the decision rendered by the Hon'ble Division Bench of this Court in **Poosala Narsayya v. State of Andhra Pradesh and another**^[9]. The expression occurring in paragraph No.8 thus:

“8. Proviso to Sub-section (2) of Section 3 is clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act, for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard.”

10. At the outset, we would like to state that the said submission is without merit for the reason that proviso to Section 3(2) of the Act relates to delegation of power to a District Magistrate or a Commissioner of Police by the Government on being satisfied to do so for every three months, but not in relation to the order of detention confirmed by the

competent authority stating that it would be effected for twelve (12) months from a particular date. If authority is needed, we incline to refer to the decision rendered by the Hon'ble Division Bench of this Court in **Arif Khan v. State of Telangana** [\[10\]](#). Instead of narrating how it emerged, in our words, we feel it apt to extract the expression of Hon'ble Division Bench contained in paragraph Nos.8 to 10 thus:

“8. The learned Government Pleader contends that the decision reported in CHERKURI MANI's case was considered by this court in WP.No.40066 of 2014 and WP.No. 5168 of 2015 along with the principles of law laid down by the Apex Court in **HARPREET KAUR [MRS] HARVINDER SINGH BEDI V/s. STATE OF MAHARASHTRA AND ANR** [\[7\]](#), **T. DEVAKI V/s. GOVERNMENT OF TAMIL NADU AND ORS** [\[8\]](#). and the power of detaining authority to pass the detention order beyond three months was considered and by following HARPREETH KAUR's case and T. DEVAKI's case the detention passed on CHERUKURI MANI was rejected. According to learned Government Pleader, earlier the three Judge Bench which was in T. Devaki's case and Harpreeth Kaur's case have not been brought to the notice of the Apex Court in Cherukuri Mani's case. Therefore, he contends that there is no illegality in the order of detention and prays for dismissing the writ petition.

9. 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.

10. 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.”

11. Yet another submission of the learned counsel that the detention order is vague and based on irrelevant and extraneous grounds, and in support thereof, he places reliance on the decision in **S. Prasad Reddy v. The Collector and District Magistrate, Anantapur**^[11], rendered by the Hon'ble Division Bench of this Court. At the outset, we would like to state that there is no merit in that submission. The grounds are specific, precise and relevant as could be gathered from the order of detention as well as grounds of detention and the confirmation of the detention order. The decision, on which, reliance is placed, would not render any assistance to him.

12. The final submission made by him is that the provisions of the Act since invoked while he was in Jail, the order of detention is illegal. In order to substantiate that submission, he places reliance on the decision of the Hon'ble Supreme Court in **Vijay Narain Singh's Case** (Supra 2). The Hon'ble Supreme Court had the occasion to refer to the decisions rendered in **Alijan Mian v. D.M. Dhanbad**^[12] and **Raisuddin v. State of U.P.**^[13] while expressing the view that there was no impediment for their detention under Section 3 (2) of the National Security Act, 1980, if the detaining authority was satisfied that detenu's enlargement on bail would be prejudicial to the maintenance of public order. In fact, the said authority is of any assistance to invalidate the order of detention, but it appears that the learned counsel with a view to submit that in a situation where order of detention was passed while the detenu was in judicial custody, the validity of detention order must be examined very carefully appears to have referred to the decision in **Vijay Narain Singh's Case** (Supra 2).

13. The learned Government Pleader also places reliance on the decision in **N. Meera Rani v. Government of Tamil Nadu and another**^[14], while submitting that subsisting custody of the detenu by itself does not

invalidate the order of his preventive detention, and the decision must depend on facts of a particular case, placed emphasis on the principles stated in paragraph No.22. The Hon'ble Supreme Court while enunciating the legal position, summarized and reiterated the settled principle in paragraph No.22 thus:

“22. 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.”

14. As stated by us in the beginning that the petitioner has not set out any ground, leaving apart any specific ground or objection to the order of detention, still,

on an examination of the submissions made during the course of arguments by placing reliance on a catena of decisions in support of each submission, we find no merit in any of the points raised by him to invalidate the order of detention passed by respondent No.4 and further confirmed by respondent No.1.

15. Therefore, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, stand closed.

G. CHANDRAIAH, J

**A. SHANKAR NARAYANA,
J**

April 19, 2016.

MGR

-
- [\[1\]](#) . (1990) 4 SCC 552
 - [\[2\]](#) . (1984) 3 SCC 14
 - [\[3\]](#) . (2012) 13 SCC 585
 - [\[4\]](#) (2005) 10 SCC 97
 - [\[5\]](#) . W.P. No.16943 of 2015, dated 26.10.2015
 - [\[6\]](#) AIR 1964 SC 334(1)
 - [\[7\]](#) (2004) 7 SCC 467
 - [\[8\]](#) . W.P. No.6510 of 2015 & batch cases, dt.29-09-2015.
 - [\[9\]](#) . 2006 (2) ALD (CrI.) 267 (AP)
 - [\[10\]](#) . W.P. No.22672 of 2015, dated 28.10.2015
 - [\[11\]](#) **2005 (1) ALD (CrI) 338 (AP)**
 - [\[12\]](#) . (1983) 4 SCC 301
 - [\[13\]](#) . (1983) 4 SCC 536

[\[14\]](#). (1989) 4 SCC418