

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.29642 of 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The petitioner seeks a writ of Habeas Corpus for setting at liberty Sri J. Shankar Singh @ Nala Shankar, S/o Sheetal Singh.

The Commissioner of Police, Hyderabad City, 2nd respondent passed an order of detention on 12.05.2015 exercising the power available to him under sub-section 2 of Section 3 of Telangana Prevention of dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act (for short henceforth 'the Act') on the ground that the detinue was a Bootlegger as defined in Section 2 (b) of the Act and that he has been acting in a manner prejudicial to the maintenance of public order. This order of detention passed by the Commissioner of Police, Hyderabad City was approved, within the time limit of '12' days provided for under Section (3) of Section 3 of the Act, by the State Government. The State Government has also placed the matter for consideration of the Advisory Board, which tendered its opinion on 15.07.2015 and taking the same into account and consideration, the Government passed orders through their G.O.Rt.No.2360 General Administration (Law & Order) Department dated 26.08.2015 fixing the period of detention as '12' months commencing from the date of his detention i.e. 01.06.2015.

Heard Sri A. Prabhakara Rao, learned counsel for the petitioner and the learned Advocate General for the State of Telangana and learned Government Pleader for Home (State of Telangana).

Sri A. Prabhakara Rao, learned counsel for the petitioner, has made very elaborate submissions as to how the order of preventive detention passed by the Commissioner of Police, Hyderabad City is clearly vitiated.

The Commissioner of Police, Hyderabad City, for arriving at his subjective satisfaction that the activities carried on by the detainee are dangerous, has taken into account and consideration five different cases. In the first ground, the incident that took place on 02.01.2014 at about 10.00 hrs pursuant to a raid conducted by the Station House Officer, Prohibition and Excise, Dhoolpet was taken into account. One Hari Prasada Sharma was arrested during the said raid for illegally possessing and transporting 615 sachets containing Illicitly Distilled Liquor. The said accused person is stated to have confessed that it is the detainee who supplied him the Illicitly Distilled liquor sachets. Based thereon, the detainee was arrested on 12.03.2015 and subsequently he was released on bail on 19.03.2015. The samples drawn from the seized contraband, when analyzed by the Government Chemical Examiner, revealed that the sample is an Illicitly Distilled Liquor unfit for human consumption and injurious to health. The second incident relied upon is the one which has taken place on 05.02.2014 at 12:05 hrs when the Station House Officer, Prohibition & Excise Station Police Station, Dhoolpet, conducted a raid and arrested one Mohd. Sohail for illegally possessing and transporting 500 sachets of Illicitly Distilled Liquor. The said Mohd. Sohail is stated to have confessed to have received the Illicitly Distilled liquor sachets from the detainee. Hence, the detainee was arrested on 12.03.2015 and remanded to judicial custody and subsequently released on bail on 19.03.2015. The Government Chemical Examiner analyzed the samples drawn and found them as Illicitly Distilled Liquor unfit for human consumption and injurious to health. The third incident occurred on 01.03.2014 at 14:45 hrs when the Station House Officer, Prohibition & Excise, Police Station, Dhoolpet Rural carried out a raid and arrested one Mohd. Sohail for transporting and possessing 406 sachets of Illicitly Distilled Liquor. The Chemical Examiner filed an identical report about the analysis of the sample as was done supra. Once again Mohd. Sohail is stated to have confessed that the

contraband was supplied by the detainee. Even in this case, the arrest of the detainee was shown as 12.03.2015 and his release on bail was 19.03.2015. The fourth incident relied upon relates to an event that had occurred on 18.10.2014 at 06:20 hrs where the Station House officer, Dhoolpet Prohibition and Excise Police Station conducted raids and arrested one Deepak Singh for possessing and transporting 1750 Illicitly Distilled Liquor sachets and the accused Deepak Singh has confessed to have received the contraband from the detainee. Even in connection with this crime, the detainee was shown to have been arrested on 12.03.2015 and was remanded to judicial custody and he was subsequently enlarged by the Criminal Court on 19.03.2015 and the Chemical Examiner filed his analysis on the samples drawn as Illicitly Distilled Liquor unfit for human consumption and injurious to health. The fifth incident occurred on 05.02.2015 at about 12:15 hrs where the Station House officer, Dhoolpet Prohibition and Excise Police Station conducted raid and arrested one Mahender Singh for possessing and transporting 60 litres of Illicitly Distilled Liquor contained in 2 plastic cans and Sri Mahender Singh, allegedly confessed to have been supplied with the illicit liquor by the Detainee. Hence, the detainee was arrested on 12.03.2015 and was remanded to judicial custody and he was subsequently enlarged by the Criminal Court on 19.03.2015 and the Chemical Examiner filed his analysis of the samples drawn as Illicitly Distilled Liquor unfit for human consumption and injurious to health.

It is the case of the detaining authority that the periodical raids conducted and the criminal cases booked against the detainee is not producing any effect on the detainee and his activities are going on unabated. Therefore, it is considered that the activities indulged in by the detainee are dangerous and hence, the detainee is liable to be detained.

The activities suspected to have been indulged in by the detainee as narrated by the detaining authority certainly bring out that

the detinue answers the description of 'bootlegger' as defined in Section 2(g) of the Act. But however, it should have occurred to the detaining authority that the Prohibition & Excise departmental officials are not diligently prosecuting the criminal cases against the detinue. The fifth ground relied upon by the detaining authority related to a raid that took place on 05.02.2015 while the fourth incident related to the incident that took place on 18.10.2014, while the third related to 01.03.2014 while the second incident related to 05.02.2014, and the first one related to 02.01.2014. Thus bringing out that the incidents spread over 15 months period have helped the detaining authority to form his subjective satisfaction about the dangerous activities indulged in by the detinue. Further, the detaining authority has also come to the conclusion that the ordinary law of the land is not producing the desired deterrent effect on the detinue.

In this context, it is apt to notice that a three Judge Bench of the Hon'ble Supreme Court in ***Rekha vs. State of Tamil Nadu***^[1] after having traversed the legal principles on the subject has set out in paragraph Nos.19, 20, 21, 23 and 29 as under:

“19. In the Constitution Bench decision of this Court in M. Nagaraj & Ors. Vs. Union of India & Ors. (2006) 8 SCC 212, (para 20) this Court observed:

“20..... It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race.”

In the 9 Judge Constitution Bench decision of this Court in I.R. Coelho (dead) By LRs. Vs. State of T.N., (2007) 2 SCC 1 (vide paragraphs 109 and 49), this Court observed:

“109..... It is necessary to always bear in mind that fundamental rights have been considered to be the heart and soul of the Constitution.”

“49.... Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as “transcendental”, “inalienable”, and primordial”.

20. In our opinion, Article 22(3)(b) cannot be read in isolation, but must be read along with Articles 19 and 21, vide Constitution Bench decision of this Court in A.K. Roy Vs. Union of India (1982) 1 SCC 271

(para 70).

21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detainee whether his imprisonment is called preventive or punitive?

23. In this connection, criminal cases are already going on against the detainee under various provisions of the Indian Penal Code, 1860 as well as under the Drugs and Cosmetics Act, 1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal.

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."

In all the incidents narrated in the grounds of detention, the detainee was shown to have been arrested on 12.03.2015 and he was enlarged on bail on 19.03.2015. Does this not reflect that the sponsoring agency viz., the Prohibition and Excise Department was not diligent at all in its functioning? Then, how can the detaining authority arrive at a conclusion that the ordinary criminal law is not deterring the detainee from indulging in dangerous activities.

It is also important to notice that separate confessional statements of the co-accused disclosing the involvement of the detainee in all those cases have not been supplied on the ground that the Prohibition & Excise officials did not prepare a separate confessional statement of the co-accused, but however, the contents of the same are recorded in the Panchanama. This apart, the copies of

such panchnamas which have been furnished are not legible enough for the detenue to make an effective representation against such detention.

Therefore, we allow this writ petition holding that the further continuance of detention of the detenue is illegal. Hence, we set-forth at liberty the detenue, if his detention is not called for any further in connection with any other cases.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

16.02.2016

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[\[1\]](#) (2011) 5 SCC 244