

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

W.P.No.14784 OF 2015

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr. D.Purna Chandra Reddy, learned counsel for petitioner and Mr.C.S.Surya Prakash, learned Special Government Pleader.

The petitioner challenges the order of detention bearing Rc.No.C2/1431/2015 dated 28.03.2015 of the 2nd respondent detaining one Iliyaz Khan @ Illu under Section 3(1)(2) of the A.P Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1/1986), as illegal and unconstitutional.

The petitioner claims to be the brother of detenu viz., Iliyaz Khan @ Illu. The 2nd respondent through the order of detention detained the detenu for a period of 12 months from the date of detention dated 01.04.2015. The 1st respondent through G.O.Rt.No.1372, General Administration (Law and Order) Department dated 06.05.2015 confirmed the order of detention. The detaining authority referred to the following cases registered against the detenu:

1. Bangalore District, Attibele Circle, Sarjapura PS Cr.No.172/2014 u/s 427, 341, 120-B, 143, 147, 148, 149, 307, 324, 332 and 353 IPC.
2. Molakalacheruvu PS Cr.No.119/14 U/s 20(1)(C) (III) (IV) & (X) of AP Forest Act, 1967, Rule 3 & 4 of A.P. Sandalwood & Red Sanders Wood Transit Rules, 1969, Sec.29 of Wild Life (Protection) Act, 1972, Sec.55(2) and 58 of Biological Diversity Act, 2002, Sec.30 of Indian Arms Act, 1959, Sec.379, 307, 353, 109, 120(B) IPC r/w 34 IPC.
3. Thavanampalli P.S. Cr.No.100/2014 U/s 307, 353, 379, 411. 120 (B), 109 IPC, Sec.32 & 29 AP Forest Act, 1967, Rule 3 of A.P. Sandalwood & Red Sanders Wood Transit Rules, 1969, Sec.29 of Wild Life (Protection) Act, 1972, Sec.55(2) and 58 of Biological Diversity Act, 2002, Sec.3 & 5 of Prevention of Damages to the Public Property Act & Sec.24(A) 24(B) & Sec.25(1-AAA) of the Arms Act, 1959.
4. Palamaner P.S. Cr.No.288/2014 U/s 353, 307, 379, 109, 120(B) r/w 34 IPC and Sec.20(1)(c), (II), (IV) & (x) of AP Forest Act, 1967, Sec.25 of Forest Act, Sec.29 of Wild Life (Protection) Act, 1972, Sec.55(II) of Biological Diversity Act, Sec.24(A) 24(B) & Sec.25(1-AAA) of the Arms Act, 1959.
5. Varadaiahpalem P.S. Cr.No.112/14 U/s 353, 307, 109, 379 r/w 34 IPC, Sec.20(1)(C) (III) (IV) (IX) of A.P.Forest Act, 1967, Sec.3 of Red Sandalwood and RS Transit Rules, 1969, and Section 30 of Indian Arms Act, 1959.
6. Gudipala PS Cr.No.02/15, U/s 307, 353, 379 & 109 IPC, Sec.32 & 29 of A.P. Forest Act, 1967 and Rule 3 of A.P. Sandal Wood and Red Sanders Wood Transit Rules, 1969, Sec.29 of Wild Life (Protection) Act, 1972, Sec.55(2) & 58 of Biological Diversity Act, 2002.
7. Penumuru PS Cr.No.03/2015, 307, 353, 120-B, 109, 379 r/w 34 IPC, Sec.29, 32 of the A.P. Forest Act r/w Rule 3 of A.P.SW RSW Transit Rules, Sec.29 of Wild Life (Protection) Act, Sec.55(2) of the Biological Diversity Act, 2002.
8. Thavanampalle PS Cr.No.06/2015 u/s 120(B), 379, 411, 109 IPC, Sec.32 & 29 of the Forest Act, 1967, Rule 3 of A.P. Sandalwood and Red Sanders Wood Transit Rules, 1969, Sec.29 of Wild Life (Protection) Act, 1972, Sec.55(2) & 58 of Biological Diversity Act, 2002, Sec.3 & 5 of Prevention of Damages to the Public Property Act."

By reference to the cases referred above, the detaining authority has recorded the subjective satisfaction as follows:

"The accused noted above is a smuggler had been indulging in various illegal activities in felling and smuggling red sander and he was habitually committing the same and was unmindful of wastage of national forest wealth and public order.

There is a prima facie case made out against the accused due to various cases registered against him. From the facts of the cases it is crystal clear that the accused is habitually involved in various crimes and has been indulging in several offences under various laws, particularly under Chapter XVI and XVII IPC in a proximity of time. All the 8 cases commencing from 26.08.2014 ending with 14.01.2015.

The accused is a mastermind in organizing the felling of red sander trees owned by the Government and also providing vehicles for illegal transporting of the same, hiring of labourers from the fringe forest villages and responsible for destruction of the valuable Govt. property by operating a gang for destruction of national wealth.

Public order is adversely affected every now and then by the dangerous activities of the accused as he involved in several offences as specified above and acting as a **Goonda** and still continued to be engaged in his illegal activities clandestinely which are organized and carried on in violation of law, which also affect adversely the maintenance of public order causing harm and danger and feeling of insecurity among the public servants like Police and Forest Officials by assaulting them while discharging their legitimate duties and threatening their lives by causing a grave of wide spread danger to life.

His activities could not be controlled just by invoking the normal legal procedure. So, he comes within the purview of sec.2(g) of A.P Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 for acting as “**Goonda**” and further there is ample material to detain the accused for preventing his dangerous activities prejudicial to the maintenance of Public Order.

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As is evident from offences records detailed above, **Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State** operates a highly organized mafia in Tirupati, Yerravaripalem and is associated with several musclemen who terrorize the local public. Hence no person had ever come forward in the past to register a complaint against this smuggler. The offences registered against the petitioner are not mere theft cases rather they are highly organized and planned crimes involving a substantial number of criminals causing great insecurity and fear in the minds of the general public. This substantiates that

Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State terrorizing the local villagers through musclemen forcing them to commit illegal theft of red sanders from Government Reserve Forests. The general public are in a grip of fear because of the muscle power and goonda elements associated with him. Thus the presence of

Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State in general public is prejudicial to the maintenance of public order is impossible if he is allowed to move freely in the public. The activities of **Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State** also encourages the local youth to turn to smuggling of red sanders as it is a easy source of illicit income. Thus the delinquent is a source of potential danger to the public well being and his activities are prejudicial to the maintenance of the public order.

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I am satisfied from the material placed before me that **Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State** is indulging in smuggling of red sanders frequently in and around of Chittoor District to Tamilnadu and other unknown destinations by organizing large number of persons and there is a valid and prima facie case against **Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State** for invoking the provisions under Section 3(1) of A.P PREVENTION OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986 (ACT 1 OF 1986) that **Sri Iliyaz Khan @ Illu, Age 36 years, s/o Hayath Khan, D.No.272/1, Adigara Kallahalli Village, Huskur Circle , Anekal Taluk, Bangalore Rural, Karnataka State** shall be detained under Section 3(1), read with 3(2) of the said Act as his activities are injurious to maintenance of public peace, law and order”.

Learned counsel for petitioner places strong reliance upon the judgment of this Court dated 22.12.2005 in W.P.No.26965 of 2015 for the proposition that the order of detention cannot and could not be passed on the ground of public order, public peace, law and order and the order of detention is vitiated. The relevant portions read thus:

“The Supreme Court in several judgments considered the words/expressions “maintenance of public peace”, “law and order”, “public order” in the context of detention order. In **Madhu Limaye v. Sub-Divisional Magistrate** the Supreme Court while dealing with the expression “maintenance of public order” in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive observed that it is confined to graver episodes not involving cases of “law and order” which are not disturbances of public tranquility but of order public. In **Ram Manohar Lohia v. State of Bihar** the Supreme Court observed that “Public order” is synonymous with public safety and tranquility. Public order, if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. Disorder is, no doubt, prevented by the maintenance of law and order also, but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Public order is something more than ordinary maintenance of law and order. The test to be adopted, in determining whether an act affects “law and order” or “public order”, is: does it lead to disturbance of the current life of the community so as to

amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed. (See: Kanu **Biswas v. State of West Bengal and the Commissioner of Police v. C. Anita**).

The very same question fell for consideration of a Division Bench of this Court recently in W.P.No.6510 of 2015 and batch, decided on 29th September, 2015. The Division Bench considered several judgments of the Supreme Court, including the judgments referred to above, and observed as follows:

“The expression “law and order” is wider in scope, as contravention of the law always affects order. “Public order” has a narrower ambit, and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of “law and order” and “public order” is one of degree, and the extent of the reach of the act in question on society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only and, therefore, touch the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is in its impact on society, it may be very different. 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 the public order. If a contravention, in its effect, is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problems of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting “public order” from that concerning “law and order”.”

The observations are based on the judgment of Supreme Court in *C. Anita* (supra). Thus, in concluding paragraph, the Division Bench observed thus:

“The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to “public peace” and “law and order” neither of which are grounds for detaining a citizen, in preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds of detention are read together, the fact that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of “public order”, and in the grounds of detention, as affecting “public peace” and “law and order”, reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of “public order” or “public peace and law and order”. As noted hereinabove, “public order” has acquired a meaning distinct from “law and order” and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to “public peace and law and order”, his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention.”

Learned Special Government submits that to the extent of recording subjective satisfaction on the ground of public order or public peace or law and order, the writ petition is covered in favour of the petitioner by the order this Court in W.P.No.26965 of 2015.

The challenge to detention is based on the subjective satisfaction recorded in the order of detention. Therefore, we are not considering the stand taken by the respondent in the counter affidavit on other aspects of the matter. On the short ground that the subjective satisfaction is recorded by referring to public order, public peace and law and order, we are satisfied that the writ petition can be allowed.

In the result, writ petition is allowed and the order of detention bearing Rc.No.C2/1431/2015 dated 28.03.2015 of the 2nd respondent is set aside. The detenu is directed to be released since the order of detention is vitiated unless his detention is required in connection with any other crime. It is made clear that if the detenu is not released on bail in any of the crimes registered against him, the Court concerned shall consider his bail application in the light of the observations made by this Bench in **G.Archana v. State of Andhra Pradesh** [decided on 14.10.2015 in W.P.No.14680 of 2015] and **B.Hima Bindu v. Chief Secretary** [W.P.No.14706 of 2015 disposed on 14.10.2015]. If copies of said judgments are not available with the learned Judge dealing with the bail application of the accused/detenu, we hope and trust that without procuring the same, he shall not proceed to consider the merits of the application for enlargement on bail.

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

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 11.02.2016
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