

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(20.04.2016)

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

WRIT PETITION No.38834 of 2015

Between:

Smt.Rehana Begum

..... PETITIONER

AND

The State of Telangana
Rep.by its Principal Secretary,
Home Department, Secretariat,
Hyderabad and 5 others

.....RESPONDENTS

Counsel for the Petitioners : **Sri M.A.SHAKEEL**

Counsel for Respondents : **Govt.Pleader fo Home (TG)**

The Court made the following:

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

WRIT PETITION No.38834 of 2015

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

Questioning the proceedings No.13/PD/CCRB/CUB/2015, dated 03.07.2015 of respondent No.2, the petitioner, who is none other than the wife of the detenu, filed this writ petition for issuance of a writ of habeas corpus to produce the detenu and set him at liberty, by declaring the said proceedings, as illegal.

2. The facts in brief are that the husband of the petitioner, by name Mr.Syed Wahab, (hereinafter referred to as “detenu”) has indulged in the acts of goondaism by acting as a leader of rowdy gang and habitually indulged in the dangerous activities by committing offences like murder, rape, preparation for dacoity, attempt to murder, rioting, theft, wrongful confinement, criminal intimidation, hurt and thereby creating panic and a feeling of insecurity among the innocent general public living in the localities of Sanathnagar, Kukatpally and S.R.Nagar P.S.limits of Cyberabad Commissionerate and indulging in illegal activities which terrorize the innocent general public. Since 2006, the detenu has involved in as many as 11 crimes under the provisions of Chapters XVI, XVII and XXII of IPC.

3. Respondent No.2 filed a detailed counter affidavit denying the contentions of the writ petitioner. It is stated in the counter affidavit that the detenu has been indulging in dangerous activities, such as murder, rape, preparation for dacoity, attempt to murder, rioting, theft, wrongful confinement, criminal intimidation, hurt and thereby creating panic situations and terrorizing the innocent general public, and thereby creating a feeling of insecurity in the minds of general public living in and around the localities of Sanathnagar, Kukatpally and S.R.Nagar P.S. limits, and that in that connection, the following cases were registered against him.

- 1) Cr.No.617/2006 of Kukatpally P.S. under Section 302 IPC
- 2) Cr.No.502/2007 of Kukatpally P.S. under Section 376(G) IPC
- 3) Cr.No.506/2007 of S.R.Nagar P.S. under Sections 147, 148, 302 r/w.149 IPC and under Section 27 of Arms Act.
- 4) Cr.No.1146/2007 of S.R.Nagar P.S. under Sections 399, 402, 120-B IPC and under Section 25(1) (a) of Arms Act
- 5) Cr.No.112/2008 of Sanathnagar P.S. under Sections 147, 148, 149 IPC and under Section 25(i) of Arms Act.
- 6) Cr.No.667/2010 of Kukatpally under Sections 147, 148, 302

r/w.149 IPC and under Section 25 of Arms Act.

- 7) Cr.No.127/2011 of S.R.Nagar P.S. under Section 307 r/w.34 IPC
- 8) Cr.No.375/2014 of Sanathnagar P.S. under Section 147, 323, 427, 506, 212 r/w.149 & 120(b) IPC
- 9) Cr.No.709/2014 of Kukatpally P.S. under Sections 302, 379 r/w.120-B IPC
- 10) Cr.No.270/2015 of Sanathnagar P.S. under Sections 342, 506 r/w.34 IPC
- 11) Cr.No.334/2015 of Sanathnagar P.S. under Sections 324, 427 and 506 r/w.34 IPC

4. Respondent No.2, in his counter affidavit, further stated that the Advisory Board in its review meeting held on 04.08.2015, upon hearing the detenu and his wife (the petitioner), reported that there was sufficient cause for detention of the detenu, as required under Section 11(1) of the Act. That the detenu was acquitted in some of the cases as the general public were afraid to give evidence against him due to his acts of violence and did not even dare to complain or speak about his criminal acts. As the registration of the cases is not deterring the detenu from indulging in unlawful activities affecting the public order, invocation of the provisions of the Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the PD Act") was necessitated, that in spite of registration of the crimes and his arrest, the detenu after coming out on bail has been habitually committing similar offences which are prejudicial to the maintenance of public order and that it is the duty of the law enforcing agency to keep such persons under stringent check by invoking the PD Act, failing which they are likely to indulge in similar activities, which are detrimental to public order. It is further averred that there is no bar for initiating action under preventive laws, though the detenu was acquitted or discharged. The object of the PD Act is to prevent the detenu from further indulging in such activities which are detrimental to public order in the larger interests of public. Respondent No.2 further stated that the Government of Telangana issued G.O.Rt.No.2434, General Administration (Law & Order) Department, dated 01.09.2015, confirming the orders of the detention of

the detenu passed by the Commissioner of Police, Cyberabad, dated 03.07.2015 and continued the detention of the detenu for a period of 12 months from 04.07.2015.

5. The learned counsel appearing for the petitioner contended as under:

1. Except in 5 cases, the detenu has been acquitted and the detention order suffers from defect for want of proximity, non-application of mind and not involving public order;
2. The ground of being declared as "Goonda" having been involved in several cases is vitiated when the particulars of the cases have not been properly or correctly mentioned in the order;
3. The grounds of detention are not precise and they are vague and stale;
4. That instances are clearly not substantive for the subjective satisfaction of the detaining authority as to how the acts of the detenu are prejudicial to the maintenance of public order;

In support of his submissions, the learned counsel has relied upon the judgments in ***V.Narasamma v. State of A.P.***^[1] and ***Shaik Lal Bee v. Government of A.P and Ors.***^[2].

6. Opposing the above submissions, the learned Government Pleader for Home (TS) submitted that as stated in the detention order as well as in the grounds thereof, under the ordinary criminal law the Police were unable to prevent the detenu from indulging in the illegal activities seriously affecting the public order and therefore respondent No.2 felt it imperative to invoke the provisions of the PD Act for detaining the detenu. He has further submitted that the nature of the detention under the PD Act is different from the punitive detention under the ordinary law and that wherever punitive detention is proved ineffective, preventive detention is resorted to. In support of his submissions, the learned Government Pleader has relied upon the Constitution Bench judgment of the Supreme Court in ***Haradhan Saha v. The State of West Bengal and others***^[3].

7. We have carefully considered the rival contentions of both parties and perused the records.

8. A Constitution Bench of the Supreme Court in *Haradhan Saha* (3 supra) has succinctly explained the scope and concept of preventive detention vis-à-vis the constitutional rights guaranteed under Article 22 of the Constitution of India, and the distinction between preventive detention and punitive detention, in paragraphs 31 and 32 of the judgment as under:

‘31. Article 22 which provides for preventive detention lays down substantive limitations as well as procedural safeguards. The principles of natural justice insofar as they are compatible with detention laws find place in Article 22 itself and also in the Act. Even if Article 19 be examined in regard to preventive detention, it does not increase the content of reasonableness required to be observed in respect of orders of preventive detention. The procedure in the Act provides for fair consideration to the representation. Whether in a particular case, a detenu has not been afforded an opportunity of making a representation or whether the detaining authority is abusing the powers of detention can be brought before the court of law.

32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.”

9. In *G. Reddaiah v. Government of Andhra Pradesh*^[4] the Supreme Court held that once the detaining authority is subjectively satisfied about the various offences labelled against the detenu, his habitual nature in continuing the same and that it is difficult to control

him under the normal circumstances, he is free to pass appropriate orders under the PD Act by fulfilling the conditions stated therein.

10. In the light of the settled legal position as reflected from the above noted judgments, we do not find any merit in the submission of the learned counsel for the detenu that in view of the pendency of the criminal cases under different sections of the Indian Penal Code, invocation of the provisions of the PD Act is not sustainable. From a reading of the impugned detention order passed by respondent No.2, it is evident that based on the material placed before him in general and the fact that as many as eleven criminal cases, the details of which are given above in brief, are instituted against the detenu, respondent No.2 has arrived at the subjective satisfaction that the detenu is continuing to carry on his illegal activities, despite the registration of criminal cases and his arrest, after he is released on bail and that the department is unable to prevent him from further indulging in the dangerous activities, obviously which are adversely affecting public life and public order.

11. The judgments relied on by the petitioner, as referred to supra, are not applicable to the facts of this case as the impugned order was passed not only on the ground that the detenu is a goonda, but also considering the report of the Advisory Board.

12. There is a catena of authorities which lay down the parameters for adjudging as to whether the impugned order, directing the detention of a detenu under the provisions of the PD Act is based on the constitutional mandate that coves the personal liberty of the citizens. Since preventive detention causes serious infringement of the rights of a citizen including his personal liberty, the said power must be properly exercised with utmost circumspection. The rights and liberties of a detenu vis-à-vis society and its well being has to be weighed in a golden scale and if the grounds exist that the personal liberty of a detenu needs to be curtailed even without there being trial, the same has to be done for maintaining the peace and tranquility in the society. Since this is a precautionary and preventive measure based on suspicion that liberty of

a detenu is likely to make serious invasion of the liberty of the citizens, the authorities, before invoking the power, which results in drastic consequences affecting the personal liberty have to exhibit greatest care and caution and as the watchdog of the constitutional rights of the citizens, this court has to see that such power is not abused or misused. The scales of justice are to be evenly balanced and the insignia of justice which holds the sword is to be used not only to prevent and protect the innocents, but the same should be used ruthlessly, if the circumstances and the criminal antecedents of a citizen justify the same in the larger interests of the society and for the existence of a peaceful and cohesive atmosphere.

13. We are conscious that the primary concern of the State is to protect and uphold the dignity of life of its citizens. Any aberrations need to be handled with due regard to the constitutional mandate that the liberty of no person should be curtailed without following due process of law and the procedure established by law.

14. The grounds on which an order of detention can be set aside or quashed have been laid down by the Courts in a number of authorities, more particularly by the Apex Court, which are reproduced hereunder:

1. Failure to refer to the orders of bail in the order and grounds of detention and its affect thereon;
2. Satisfaction arrived at both on grounds of public order, public peace and law and order and its consequences;
3. Satisfaction arrived at on non-existing grounds, vitiating the order of detention;
4. Failure to inform the detenu of his right to submit a representation to the detaining authority;
5. Non-furnishing of copies of bail orders to the detenu;
6. Inordinate and unexplained delay in consideration of representation;
7. Illegible documents supplied to the detenu;

8. Documents supplied in a language unknown to the detenu.

15. In the instant case, the detenu Mr.Syed Wahab is said to be a rowdy sheeter, creating terror in and around the areas of his habitation and in the minds of other residents of the locality. He was involved in several of crimes which by all means can be termed as grave and serious, posing a serious threat towards maintenance of public order in the society. As per the record, he was involved in as many as three murder cases and several other crimes, such as, gang rape, extortion, attempt to commit murder, rioting, physical assault, criminal intimidation, theft etc., and there were 11 crimes registered against the detenu during the years 2006 to 2015. Out of the said 11 crimes, 6 cases were disposed of and 5 cases are pending. One of the crimes is in respect of the allegation that the detenu detained one person, who was to give evidence against him in a murder case, and threatened the said person with dire consequences, if the said person gives evidence against him. Based on the above material and the report of the Advisory Board, respondent No.1 has arrived at the satisfaction that the activities of the detenu have the debilitating effect of disturbing the public order and it has accordingly confirmed the detention order.

16. On behalf of the detenu, it is submitted by the learned counsel that all the instances referred to in the order only relate to law and order, but not to public order, and that the order of detention is based on non-existing grounds and the chain of events, if any got snapped since the alleged crimes date back to the year 2007.

17. In adjudging as to whether an order detaining a person under the provisions of the PD Act is sustainable or it suffers from any of the vices mentioned above, the totality of facts and circumstances have to be taken into consideration. A person who has been indulging in crimes, such as, murder, rape, theft, extortion, intimidation etc. and always moves armed with a sword can be treated as a person whose freedom is bound to affect the liberty of others.

18. The petitioner could not substantiate any of her contentions that the detention order of her husband (detenu) in any way is vitiated for

non-compliance of the statutory requirements and the requirements of law, as propounded by the Apex Court. It is on record that a detailed personal hearing was also given by the Advisory Board during course of which, both the petitioner and the detenu were heard in person. The requisite material has been supplied to the detenu and he was afforded an opportunity to make a representation.

19. Considering the above, we see no reason to interdict the detention order which is based on legally acceptable parameters and the same is liable to be upheld. There are no grounds to interfere with the same.

20. In view of the above, the Writ Petition fails and is accordingly dismissed. No order as to costs.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 20.04.2016

Dsr

[\[1\]](#) 2003 (5) ALD 701 (DB)

[\[2\]](#) 1998 (4) ALD 283 (DB)

[\[3\]](#) (1975) 3 SCC 198

[\[4\]](#) (2012) 2 SCC 389