

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

WRIT PETITION NO.8389 OF 2016

O R D E R

(per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the detention of the petitioner's son, Mohd. Feroz Khan, under detention order dated 23.01.2016 passed by the Commissioner of Police, Hyderabad. The said detention was confirmed by the Government of Telangana under G.O.Rt.No.889, General Administration (Law & Order) Department, dated 21.04.2016 and extended for a period of 12 months from the date of detention, 08.02.2016.

Sri Challa Dhanamjaya, learned counsel for the petitioner, would urge various grounds of attack against the detention of the petitioner's son.

However, we are of the opinion that the issue is amenable to resolution on one singular ground.

It is a settled position of law that preventive detention under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity, 'the Act of 1986') is a necessary evil for the protection of public order in our democratic society. However, Article 22 of the Constitution mandates the safeguards that have to be scrupulously adhered to while subjecting a person to such detention, without following the ordinary due process of law. A detaining authority, who exercises 'suspicion jurisdiction' and arrives at subjective satisfaction that the detention of the person concerned is warranted in terms of the Act of 1986 to protect public order, must

invariably apply its mind independently and assess all the relevant facts before attaining the necessary subjective satisfaction.

In this context, the detaining authority would have to analyze the material relied upon by the sponsoring authority in support of its recommendation and arrive at an informed conclusion that the detention, as sought, is warranted. It is trite to state, the relevance of the material relied upon by the detaining authority in this regard is open to judicial review though sufficiency thereof is not.

In the present case, the order of detention demonstrates that six criminal cases, in which the petitioner's son was involved, were cited therein but in the grounds of detention, only five of the said cases were dealt with at length. Towards the end of the grounds of detention, in the context of the bail petitions and the disposal thereof, all six cases were again cited. However, the material which was relied upon by the detaining authority and was thereafter made available to the detenu, by duly obtaining his signature on each page thereof, reflects that wholly unconnected documents were also placed before the detaining authority and were blindly forwarded to the detenu. Reference in this regard may be made to the documents relating to Crime No.421 of 2015 on the file of Chilkalguda police station, some of which are in Telugu; Crime No.321 of 2015 on the file of Jagadgirigutta police station, some of which are in Telugu; and Crime No.310 of 2015 on the file of Gandhinagar Police Station.

The only inference that can be drawn from the fact that this wholly irrelevant material was placed before the detaining authority, and completely unmindful of its irrelevance the detaining authority simply forwarded the same to the detenu, is that the detaining authority did not even bother to go through the said material so as to

determine its relevance. It appears that this irrelevant material was placed before the detaining authority by the sponsoring authority for the purpose of building up volume so as to influence the detaining authority. Unmindful of the constitutional mandate and the weighty obligation and responsibility resting upon its shoulders, the detaining authority seems to have been carried away by the material placed before it and, without independent application of mind, passed the order of detention and forwarded the entire material, including the wholly irrelevant documents therein, to the detenu. This non-application of mind by the detaining authority vitiates the order of detention in no uncertain terms and the confirmation thereof by the Government of Telangana is rendered equally unsustainable in law.

The writ petition is accordingly allowed setting aside the order of detention dated 23.01.2016 passed by the Commissioner of Police, Hyderabad, and the confirmation thereof vide G.O.Rt.No.889 dated 21.04.2016. The petitioner's son, Mohd. Feroz Khan, shall be set at liberty forthwith in the event his confinement is not required in relation with any other case. Pending miscellaneous petitions shall stand closed. No order as to costs.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

31ST AUGUST, 2016

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