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

WRIT PETITION NO.3942 OF 2016

O R D E R
(*Per Hon'ble Sri Justice Sanjay Kumar*)

This writ petition was initially filed challenging the detention order dated 26.11.2015 passed by the Commissioner of Police, Hyderabad City, along with the approval thereof by the Government of Telangana under G.O.Rt.No.3198, General Administration (Law & Order) Department, dated 07.12.2015, and a writ of habeas corpus was sought to set free the brother of the petitioner, Mahipal Singh Yadav (*hereinafter*, 'the detenu'). By way of the amended prayer, the petitioner also challenged confirmation of his brother's detention and extension thereof for a period of 12 months from 27.11.2015, the date of commencement of the brother's detention, *vide* G.O.Rt.No.343, General Administration (Law & Order) Department, dated 12.02.2016.

In the affidavit filed in support of the writ petition, it is stated that the detenu is a Director in My Invest Guruji Services Private Limited, Gurgaon, Haryana State (*hereinafter*, 'Company No.1'), and that this company is engaged in the business of providing prospective clients to various companies on commission basis. Value Added Cards Services Private Limited (*hereinafter*, 'Company No.2') is one such company. Company No.2 is stated to be involved in the business of providing home loans, health cards, holiday packages etc. The directors of Company No.2 are stated to be Sandeep Juneja and Sandeep Agarwal and the detenu is stated to have no shareholding in Company No.2. However, the detenu admittedly used to connect customers and brief them about the services rendered by Company No.2 and refer them to it. Thereafter, Company No.2 provided services to such customers after completion of necessary paper work and documentation. All money exchanges were between such clients and Company No.2 or its sister concern, Value Finest Finance Private Limited (*hereinafter*, 'Company No.3').

It is stated that in the first week of September, 2015, the detenu was taken into custody and was thereafter arrested on 03.09.2015. He was then brought to Hyderabad on transit remand. According to the petitioner, the police did not arrest the main culprits, the directors of Company No.2. It is further stated that six crimes were registered against Company No.2, Company No.3 and others, wherein the detenu was also shown as an accused. Two of the said crimes were registered in Karnataka and the remaining were registered in the State of Telangana. As per the petitioner, no allegation was made against the detenu in those cases and it is only Company No.2, Company No.3 and their directors who were subjected to criminal allegations. It is stated that the entire services were provided by the said companies and the detenu was only a commission agent for taking details of prospective clients for referring them and that he has been falsely implicated in the cases. It is further stated that the detenu was enlarged on bail in all the cases registered in the State of Telangana.

While so, the Commissioner of Police, Hyderabad City, Hyderabad, passed the impugned detention order dated 26.11.2015 in exercise of power under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (*hereinafter*, 'the Act of 1986'). The detention order was approved by the Government of Telangana, as required by the Act of 1986, under G.O.Rt.No.3198 dated 07.12.2015 and was thereafter confirmed under G.O.Rt.No.343 dated 12.02.2016, whereby the subject detention was extended for a period of 12 months from the date of commencement of the detention, 27.11.2015. Hence, this writ petition.

Though it has also been contended in the writ petition that the time stipulations contained in the Act of 1986 were not adhered to in terms of consideration of the petitioner's representation on behalf of the detenu by the Advisory Board, this Court finds that it is not so. The petitioner's brother was detained on 27.11.2015 and the said detention was approved within 12 days. The report of the Advisory Board after due consideration of the petitioner's representation was submitted to the Government on 14.01.2016, well within the stipulated seven weeks, and having duly considered the same, the Government of Telangana confirmed and extended the detention for a period of twelve months. There is therefore no merit in this contention.

Perusal of the grounds of detention reflects that the Commissioner analyzed the alleged involvement of the detenu in three cases to satisfy himself that his activities were prejudicial to maintenance of public order. Crime Nos.266 of 2015 and 290 of 2015 on the file of Cyber Crime Police Station, Central Crime Station, Detective Department, Hyderabad, and Crime No.240 of 2015 on the file of Rein Bazar Police Station were the cases cited.

All these cases were registered under Section 420 IPC apart from other provisions of law.

Sri B.Chandrasen Reddy, learned counsel for the petitioner, would contend that the aforestated cases involving the detenu concern 'law and order' and not 'public order'. He would assert that mere pendency of criminal cases cannot be the basis for a preventive detention order. Learned counsel would further contend that irrelevant grounds were taken into consideration by the Commissioner and that the detention order suffers from non-application of mind. Reliance in this regard was placed on the statement made by one K.Vishnu Vardhan Reddy, in relation to Crime No.158 of 2015, to demonstrate that the detenu was not involved in the transactions between the customers and Company No.2. Reference was also made to the fact that the detenu was granted release orders in Crime Nos.152 of 2015 and 158 of 2015 by the learned XVI Metropolitan Magistrate, Kukatpally, but these orders were not taken into consideration.

Be it noted at this stage itself that these cases did not figure amongst the three cases considered as grounds for the detention.

In his counter-affidavit, the Commissioner of Police stated that the records reveal that the detenu is a habitual offender involved in as many as seven cases of cheating in Hyderabad, Cyberabad and Bangalore. Out of these, three recent cases were considered and found to be sufficient to constitute grounds for detention under the Act of 1986. The Commissioner pointed out that in two out of the three cases, the detenu was released on bail. He further pointed out that the detenu is a 'goonda' under Section 2(g) of the Act of 1986, which defines 'goonda' to mean a person who commits or abets the commission of offences punishable under Chapter XVII of the IPC. This Chapter relates to offences against property and Section 420 IPC figures therein. The Commissioner asserted that in spite of registration of offences against him, the detenu was habitually committing similar such offences prejudicial to the maintenance of public order and therefore, the detention order was passed by him in exercise of statutory power under the Act of 1986. As regards the alleged fraudulent transactions, whereby innocent customers were duped, the Commissioner stated that in all, Rs.3.16 crore was credited to the account of Company No.2 upon Company No.1, run by the detenu, duping and referring such customers. The Commissioner further stated that out of this amount, 65% was transferred to bank account of Company No.1 and the personal bank account of the detenu. Details thereof were also furnished in the counter-affidavit and demonstrate that Company No.1 received Rs.2.74 crore out of the total Rs.3.16 crore from Company No.2 and the detenu himself received Rs.10.00 lakh separately. The Commissioner further stated that the Directors of Company No.2, viz., Sandeep Agarwal and his brother, Mukesh, were arrested on 03.09.2015 and remanded to judicial custody, apart from being subjected to detention orders under the Act of 1986. The other Director, Sandeep Juneja, was stated to be absconding.

As to the contention that the offences committed constitute merely a 'law and order' problem and not an issue pertaining to 'public order', the Commissioner reiterated that the activities of detenu qualified him as a 'goonda' under Section 2(g) of the Act of 1986 and relied upon the observations of the Supreme Court in

***ARUN GHOSH V/s. STATE OF WEST BENGAL*[1]**. He further stated that the Advisory Board, in its meeting held on 13.01.2016, heard not only the detenu, but also the petitioner, and thereafter submitted a report holding that there was sufficient cause for continuing with the detention. The Commissioner concluded by stating that all the mandatory procedures and provisions had been scrupulously followed in terms of the Act of 1986 and that no interference was warranted with the impugned detention.

In his additional counter, the Commissioner furnished more details of the transactions of the companies, and more particularly, Company No.1, whereby innocent customers were allegedly duped and cheated. He pointed out that the bank account data clearly demonstrated that a substantial part of the amount so collected was made over to Company No.1, in which the detenu was a Director, and assailed the petitioner's claim that Company No.1 was only a commission agent.

It is a settled position of law that preventive detention is a necessary evil in our society, which has to be strictly implemented in terms of the mandate under Article 22 of the Constitution, as 'public order' must take priority over individual freedom. However, this Court, being the *sentinel on the qui vive*, would be quick to react in the event the State transgresses its power of preventive detention or violates or ignores Constitutional safeguards.

As pointed out by the Supreme Court in ***SUBRAMANIAN V/s. STATE OF TAMIL NADU*[2]**, it is not for the Court to interfere with the subjective satisfaction reached by the detaining authority except on exceptional and extremely limited grounds and the Court

[1] (1970) 1 SUPREME COURT CASES 98
[2] (2012) 4 SUPREME COURT CASES 699

would not substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. The Supreme Court further pointed out that sufficiency of grounds is not for the Court to determine as the satisfaction underlying the detention of the person concerned, so as to prevent him from acting in a manner prejudicial to public order, is purely subjective and not objective.

Mindful of the aforestated legal position, this Court would not sit in appeal over the grounds of detention which form the basis for the detention order dated 26.11.2015. All that is required to be ensured is that the detaining authority, the Commissioner of Police, Hyderabad, arrived at an informed subjective satisfaction upon due consideration of all the relevant material. Sufficiency or adequacy of the grounds of detention is beyond the purview of judicial review as it falls squarely and solely within the realm of the subjective satisfaction of the detaining authority (See ***PUSHPADEVI M. JATIA V/s. M.L.WADHAWAN, ADDITIONAL SECRETARY TO GOVERNMENT***[3]).

Though Sri B.Chandrasen Reddy, learned counsel, would contend that the detenu had no role to play in the offences which are the subject matter of the various crimes registered in the States of Telangana and Karnataka, it is not for this Court to adjudicate upon such issues at this stage. It is not in dispute that the detenu figures as an accused in the subject crimes and it is for him to face the legal process in connection therewith. For the purposes of this case, it would suffice to take note of the fact that sufficient material has been collected to implicate the detenu and

[3] (1987) 3 SCC 367

Company No.1, in which he is a Director, in the context of the monies collected from the transactions in question. Such information, in the considered opinion of this Court, would be relevant for the detaining authority to subjectively satisfy itself on the necessity of detaining him, notwithstanding the pendency of criminal cases.

It is now fairly well settled that mere pendency of criminal cases would not, by itself, bar exercise of power under the Act of 1986. In ***HARADHAN SAHA V/s. THE STATE OF WEST BENGAL***[4], the Supreme Court pointed out that merely because a detenu is liable to be tried in a criminal Court for the commission of a criminal offence, it would not debar the Government from taking action for his detention under preventive detention laws and the mere circumstance that a detention order was passed during the pendency of the prosecution would not violate the order. Again, in ***UNION OF INDIA V/s. PAUL MANICKAM***[5], the Supreme Court held that if the detaining authority is aware that the detenu is in custody but is reasonably satisfied with cogent material that there is likelihood of his release and seeks to prevent him from indulging in prejudicial activities, it can validly make an order of detention.

In ***N.MEERA RANI V/s. GOVERNMENT OF TAMIL NADU***[6], the Supreme Court held that the observations made in ***SHASHI AGGARWAL V/s. STATE OF UTTER PRADESH***[7] and ***RAMESH YADAV V/s. DISTRICT MAGISTRATE, ETAH***[8] were made on the facts of those particular cases and if the material relied upon by

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[4] (1975) 3 SCC 198
[5] (2003) 8 SCC 342
[6] (1989) 4 SCC 418
[7] (1988) 1 SCC 436
[8] (1985) 4 SCC 232

the detaining authority indicated its awareness about the detenu being in custody and his likelihood of indulging in prejudicial activities if released on bail, the detention order would be valid. The Supreme Court summarized the settled principle thus: Subsisting custody of the detenu by itself does not invalidate an order of preventive detention and the decision must depend on the facts of the particular case. The detaining authority must show its awareness of the 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, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made.

In ***SANJAY KUMAR AGGARWAL V/s. UNION OF INDIA***[9], the Supreme Court, upon a conspectus of earlier case law, observed that no decision had gone to the extent of holding that an order of detention could not validly be passed against a person in custody under any circumstances and that the facts and circumstances of each case have to be considered in the case of a detenu who is already in jail.

In ***T.P.MOIDEEN KOYA V/s. GOVT. OF KERALA***[10], the Supreme Court observed that as the very object of passing of detention order is to prevent a person from acting in a manner prejudicial to maintenance of 'public order' and normally, there would be no requirement of passing such an order against a person who is already in custody in relation to a criminal offence

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[9] (1990) 3 SCC 309
[10] (2004) 8 SCC 106

and there is no immediate possibility of his being released, but in law, there is no bar in passing a detention order even against such a person if the detaining authority is subjectively satisfied from the material placed before him that it should be passed.

In ***REKHA V/s. STATE OF TAMIL NADU***[11], the Supreme Court observed that there would be a real possibility of release of a person on bail if he has moved a bail application which is pending and logically, if no such bail application is pending, there is no likelihood of such person being released on bail. The exception to this rule, as culled out by the Supreme Court, is that where a co-accused has been granted bail, the detaining authority can reasonably conclude that there is likelihood of the detenu also being released on bail even though no bail application is pending. This judgment is sought to be pressed into service by Sri B.Chandrasen Reddy, learned counsel, on the ground that the detenu had not been granted bail in Crime No.240 of 2015 on the file of Rein Bazar Police Station. It is however a fact that he had already been granted bail in all the other cases registered in the State of Telangana. As he had already been granted bail in cases which were of more serious nature, involving not only Section 420 IPC but also the provisions of the Information and Technology Act, 2008, this Court finds basis for the detaining authority to opine that there was a genuine possibility of his securing bail in Crime No.240 of 2015 also.

Though Sri B.Chandrasen Reddy, learned counsel, would further contend that the cases concerning the detenu only involve a ‘law and order’ problem, being cases of cheating, this Court is

[11] (2011) 5 SCC 244

conscious of the fact that only a thin line divides 'law and order' and 'public order'. Whether a person has committed a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order' is a question of degree and the extent of the reach of such act upon society.

In ***ASHOK KUMAR V/s. DELHI ADMINISTRATION***[12], the Supreme Court observed that the true distinction between 'public order' and 'law and order' lies not in the nature or quality of the act, but in the degree and extent of its reach upon society, as the distinction between the two concepts is a fine one and there could be overlapping. The Supreme Court further observed that acts similar in nature but committed in different contexts and circumstances might cause different reactions and in one case, it might affect specific individuals only and touch the problem of 'law and order', while in another, it might affect 'public order'. The Supreme Court held that it is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of 'public order'.

A large number of acts directed against individuals may total up into a breach of 'public order' (***ARUN GHOSH***[1]).

In the present case, the data available with the authorities reflects that over 600 hundred people transacted with the companies in question and the amount collected from them is running into crores of rupees. It would therefore not be an individual case of cheating as the alleged fraudulent transactions, resulting in the cheating of over 600 people, would invariably have an effect on society at large.

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[12] (1982) 2 SCC 403

Significantly, in ***GIRISH KUMAR MAKHIJA V/s. THE STATE OF TELANGANA***[13], a Division Bench of this Court confirmed the detention order in that case, which is similar on facts, observing that when the detenus allegedly cheated the general public by establishing fake companies and luring them to deposit money in the accounts of such fake companies by promising loans, there could be no doubt that such activities, if proved, would certainly affect the public at large and disturb the even tempo of public life.

Sri B.Chandrasen Reddy, learned counsel, would rely upon ***YAMMAN ONGBI LEMBI LEIMA V/s. STATE OF MANIPUR***[14], wherein the Supreme Court observed that personal liberty of an individual is the most precious and prized right guaranteed under the Constitution and the State's power to curb such a right is required to be exercised with due caution as well as upon proper appreciation of the facts as to whether such acts are in any way prejudicial to the public law and order warranting issuance of an order of detention. An individual incident of an offence under the Penal Code, however heinous, *per* the Supreme Court, would be insufficient to make out a case for issuance of an order of preventive detention. This judgment is of no avail to the petitioner as we find that this is not a case of an individual offence involving the detenu and multiple criminal offences are laid at his door.

Similarly, in ***RAMESH YADAV***[8], the Supreme Court was concerned with a case where the order of detention was ultimately held to be based on grounds which were irrelevant and stale. This judgment has no application to the present case.

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[13] 2016 SCC OnLine Hyd 202
[14] (2012) 2 SCC 176

In the light of the aforestated facts and the settled legal position, we find that relevant material was available and was duly considered by the detaining authority while arriving at the required subjective satisfaction for passing the order of detention dated 26.11.2015 and all procedural safeguards mandated by law were scrupulously adhered to. We therefore find no reason to interfere with the impugned detention of the petitioner's brother.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M.SEETHARAMA MURTI,J

8TH SEPTEMBER, 2016
PGS