

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.30084 OF 2015

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

The detenu herein is one Immidi Mahesh alias Tinku, son of

I. Ramakrishna, driver by profession belonging to Neredmet locality of Ramakrishnapuram, Secunderabad. His mother - Smt.

I. Rajeshwari filed the instant writ petition under Article 226 of the Constitution of India seeking a writ of *Habeas Corpus*, to produce the said detenu and to set him free by quashing the order of detention as confirmed by issuance of G.O.Rt.No.2328, General Administration (Law and Order) Department, dated 22-08-2015, by respondent No.2 being the State of Telangana represented by the Chief Secretary

2. In the first instance, respondent No.1 - Commissioner of Police, Hyderabad, passed the order of detention on 19-05-2015, under Sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986) (for short 'the Act'), recording

his satisfaction that the detenu has been habitually engaging himself in unlawful acts and indulging in snatching of gold chains including Mangal Sutrams using force from women folk in public streets creating large scale fear and panic among them adversely affecting the public order and, thus, his activities attract the term 'goonda' as defined by the provisions of Section 2 (g) of the Act.

i) Thereafter, the State Government by its order, dated 22-08-2015, made under Section 12 (1) read with Section 13 of the Act, has confirmed the order of detention agreeing with the opinion of the Advisory Board constituted under the Act and directed the detention of the detenu to be continued for a period of twelve (12) months from the date of the detention i.e., 16-06-2015.

3. In her affidavit, the petitioner states that her son was arrested in Crime No.768 of 2014 under Section 382 of Indian Penal Code, 1860 (for short 'IPC') and remanded to judicial custody by the learned III Additional Chief Metropolitan Magistrate, Hyderabad and, thereafter, he was taken into police custody and shown as accused in another four (04) cases in Crime Nos.457, 511, 650 and 780 of 2014 and, thus, he was arrested in all the five (05) cases and subsequently he was released on bail, and even trial has been commenced. But, surprisingly,

Sanjeevreddy Nagar Police Station, on 16-06-2015, arrested her son at their house pursuant to the orders, dated 19-05-2015, and detained in Cherlapally Central Prison, Ranga Reddy District under the provisions of the Act, and that her son is falsely implicated in all the crimes.

a) She has also stated in her affidavit that herself and her husband on wheel chair appeared before the Advisory Board on 20-07-2015 and represented to the Board that her son has been falsely implicated in five (05) cases by Sanjeevreddy Nagar Police Station and he was not having any criminal background and they are old aged persons and senior citizens and being looked after by their son, and he is not convicted by any Court, nor he is a 'goonda' within the definition of the Act as projected by respondent No.1.

b) The grounds agitated as could be gathered from the averments of the affidavit are:

- i. that the order of extension of detention issued by respondent No.2 in G.O.Rt.No.2328, dated 22-08-2015 is contrary to the proviso to Sub-Section (2) of Section 3 of the Act, and on that ground alone, the order is liable to be set aside;
- ii. that the order of detention was made in a

mechanical manner without application of mind; and

- iii. that the order of detention passed by respondent No.2 is against the principles of natural justice and in violation of Articles 21 and 22 of the Constitution of India and, therefore, tainted with illegality.

c) Specifying the above three (03) grounds, the petitioner sought to quash the order of detention and confirmation order of detention and to set her son free from detention.

4. Respondent No.1 - Detaining Authority has filed counter affidavit. Having reiterated the contents in the order of detention and the nature of crimes and the manner in which they alleged to have committed by the detenu, have been elaborated as shown in the grounds of detention. Thereafter, states that all the five (05) crimes of chain snatching have been committed in a span of four (04) months i.e., between May, 2014 and August, 2014 and remanded to judicial custody in one of the crimes and then basing on his voluntary confession said to have made, sent him to judicial remand in other four crimes on P.T. Warrants. Since the detenu was released on bail on 18-09-2014, the detaining authority taking note of past conduct and history and his release on bail in all cases, having satisfied that there was every possibility of his committing similar type of offences affecting public order

adversely and with a view to prevent him from further indulging in such activities which are prejudicial to maintenance of public order, passed the order of detention under challenge.

i) Answering first ground that confirmation of order of detention, dated 22-08-2015, is contrary to Sub-Section (2) of Section 3 of the Act, placed reliance on the decision of the Hon'ble Supreme Court in **Mrs. Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra**^[1], and extracted the relevant portion stating that proviso to Sub-Section (2) of Section 3 of the Act relates to the delegation of power but not with the specific period of detention being mentioned in the order of detention.

ii) Concerning the second ground touching subjective satisfaction of the detaining authority, while referring to the activities of the detenu and the material placed before it and its satisfaction that there is a strong *prima facie* case against the detenu that he has been habitually indulging in chain snatchings in public roads/places in the broad day light and creating panic and insecurity in the minds of the public, particularly, women folk are fearing to come on the roads, has recorded his satisfaction by strictly following the mandatory provisions of the Act and, therefore, there is no illegality or violation of any provisions of the Act in passing the impugned order of detention. The detaining authority has also placed

reliance on the decision of the Hon'ble Supreme Court in **Subrahmanian v. State of Tamil Nadu**^[2], for the proposition that the Court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant and that sufficiency of grounds is not for the Court, but for the detaining authority for the formation of subjective satisfaction and extracted the relevant portion in paragraph No.13. Therefore, sought to dismiss the writ petition.

5. Heard Sri J.L.N. Murthy, learned counsel for the petitioner, and the learned Government Pleader for Home appearing for the respondents.

6. At the outset, we would like to state that no tangible ground has been raised except the three (03) general grounds, which are adverted to in the above. The learned counsel would submit that the order of confirmation of detention made by respondent No.2 is contrary to the provisions of Sub-Section (2) of Section 3 of the Act and, therefore, liable to be set aside. It appears that the petitioner intends to insist the ground that the order detaining the detenu ought not to have been made beyond three months period. Though, the learned counsel has not placed reliance on any authority, still, in view of the submission of the learned Government Pleader that the law laid down in **Mrs. Harpreet Kaur's Case** (Supra 1) would befittingly answer the said

submission. We are of the view, it would be apt to extract the observations made by the Hon'ble Apex Court in paragraph No.22 thus:

“22.Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by Sub-Section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in Sub-section (1), exercise the powers of the State Government as conferred by Sub-Section (1). The proviso to Sub-Section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under Sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under Sub-Section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under

Section 12 of the Act.....”

7. We are of the considered view, that there is merit in the submission made by the learned Government Pleader for the reason that proviso to Sub-Section (2) of Section 3 of the Act relates to satisfaction of the Government in delegating the power to the Magistrate or the Commissioner of Police having satisfied that it is necessary so to do, by order in writing and further provides that such delegation shall not, in the first instance, exceed three months, but may amend such order to extend such period from time to time, by any period not exceeding three months at any one time. So, the submission of the learned counsel is without any merit.

8. Touching the second submission that the order of detention was made in a mechanical manner without application of mind, nothing concrete has been made in the affidavit filed on behalf of the detenu to show that the authority has not applied its mind at the time when the order of detention was passed and further confirmed by respondent No.2. The learned counsel has placed reliance on the decision rendered by a Hon'ble Division Bench of this Court in **Smt. Vasnthu Sumalatha v. State of Andhra Pradesh, rep.by its Chief Secretary, Hyderabad & others**^[3], and the decisions referred therein, in an attempt to support his stand that subjective satisfaction recorded by the detaining authority was made

in a routine way and has not applied its mind. In the same direction, he has referred to the decisions of the Hon'ble Supreme Court in **Dr.Ram Manohar Lohia v. State of Bihar**^[4], **Mohd. Alam v. State of West Bengal**^[5], and **Khudiram Das v. The State of West Bengal & others**^[6]. He has also placed reliance on the decision of the Hon'ble Supreme Court in

A.K. Gopalan v. The State of Madras^[7].

9. We have gone through the order of detention passed by respondent No.1, further confirmed by respondent No.1 and the grounds of detention. The basic facts and the procedural requirements that constitute invariable ingredients to record the subjective satisfaction of the detaining authority have been occurring. In our view, the learned counsel is unable to point out as to how the order of detention suffers from the vice of illegality. Merely stating in the affidavit that on one and the same day, the detenu was arrested in all five crimes is no ground to hold that the order of detention was passed without application of mind. When nothing is attributed in the direction of *mala fides* in passing the order of detention by respondent No.1, it is not open for the Courts to substitute its opinion to that of the opinion of the detaining authority in arriving at the subjective satisfaction that the detenu answers the description of 'goonda' as defined in Section 2 (g) of the Act.

10. In the said context, the learned Government Pleader placed reliance on the decision in **Subrahmanian's Case** (Supra 2). The Hon'ble Apex Court restated the well-settled law that the Court does not interfere with the subjective satisfaction reached by the detaining authority except exceptional and extremely limited grounds. On thorough examination of the order of detention and confirmation of order of detention as opined by us hereinbefore, such exceptional circumstance neither occurring in the present case, nor did the learned counsel for the petitioner point out any such exceptional ground that vitiates the impugned order of detention. We, thus, find no merit in the said submission.

11. The third ground is that the order of detention passed by respondent No.1 is against the principles of natural justice and in violation of Articles 21 and 22 of the Constitution of India. We would like to observe that except stating so in the affidavit, nothing is ventilated by the petitioner that there has been gross violation of principles of natural justice. We would like to observe that it is not the case of the petitioner that no earliest opportunity was afforded. In fact, in paragraph No.4 of the affidavit itself, the petitioner stated that she along with her husband in a wheel chair appeared before the Advisory Board on 20-07-2015 and represented to the Board that her son was falsely implicated in five cases by Sanjeevreddy Nagar Police Station, and he was not

having any criminal background. In such an eventuality, we are absolutely unable to agree with that submission of the learned counsel. In fact, when he submitted brief important grounds on behalf of the petitioner in writing, the learned counsel has referred to the decisions of the Hon'ble Supreme Court in **Lallubhai Jogibhai Patel v. Union of India & Ors**^[8], **Rushikesh Tanaji Bhoite v. State of Maharashtra**^[9], **State of Bombay v. Atma Ram Sridhar Vaidya**^[10], and **A.C. Razia v. Government of Kerala**^[11], and the decision of a Hon'ble Division Bench of this Court in **V. Muthuvelu v. State of A.P.**^[12] and the Hon'ble Bombay High Court in **Harikisan v. State of Maharashtra**^[13] on the principle that non-supply of documents, which constitute the basis of detention order in a language which the detenu can understand and in script, which he can read, vitiates the order of detention. We may say, that such a ground was not at all agitated in the affidavit, except vaguely stating that there has been violation of principles of natural justice. Even, on an examination of record, we find a receipt passed by the detenu on 16-06-2015, indicating that he knows English very well and he does not need any translations of the documents supplied to him. Thus, viewed in the light of the receipt also, we have no hesitation to state that there is no merit

in that submission.

12. As stated by us hereinbefore, the petitioner has not set out any specific ground or objection to the order of detention, and even on an examination of the submissions made during the course of arguments by placing reliance on a catena of decisions in support of his submissions, we find no merit in any of the points agitated by him to invalidate the orders passed by respondent No.1 and further confirmed by respondent No.2.

13. Therefore, the instant writ petition is dismissed.
No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, stand closed.

G. CHANDRAIAH, J

**A. SHANKAR NARAYANA,
J**

April 20, 2016.

Mgr

[\[1\]](#) . [1992] 2 SCC 177

[\[2\]](#) . (2012) 4 SCC 699

[\[3\]](#) . W.P. Nos.6510 of 2015 and batch cases, dated 29-09-2015

[\[4\]](#) . 1966 AIR 740

[\[5\]](#) . 1974 AIR 917

[\[6\]](#) . 1975 AIR 550

[\[7\]](#) . 1950 AIR 27

[\[8\]](#) . 1981 AIR 728

[\[9\]](#) . (2012) 2 SCC 72

[\[10\]](#) . 1951 AIR SC 157

[\[11\]](#) . (2004) 2 SCC 621

[\[12\]](#) . Judgment in W.P. No.8022 of 2015, dated 22-09-2015

[\[13\]](#) . 1962 AIR SC 911