

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

-
HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

-
WRIT PETITION No. 5989 of 2016

Date: 28.03.2016

-
Between:

Syed Imran @ Baba

... Petitioner

And

The State of Telangana, rep., by its Principal Secretary,
Home Department,
Hyderabad & others.

... Respondents

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

WRIT PETITION No. 5989 of 2016

—
PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard learned counsel for the parties.

This writ petition challenges the order of detention, dated 28.11.2015, passed by the 2nd respondent.

Sri H. Venugopal, learned Government Pleader for Home, at the outset, invited our attention to the judgment of the Supreme Court in **Subhash Popatlal Dave vs. Union of India and another** ^[1] and submitted that the detenu is absconding and unless he surrenders, his writ petition may not be entertained. He submits that right from inception he is evading arrest and not allowing to execute the detention order, which came to be passed on 28.11.2015. In support of his contention, he placed reliance on paragraph 17 of the said judgment. Paragraph 17 reads thus:

“Therefore, in my view, the order of detention is not fit to be quashed and should not be quashed merely due to long lapse of time but the grounds of detention ought to be served on him once he gains knowledge that the order of detention is in existence so as to offer him a plank to challenge even the grounds of detention after which the Courts will have to examine whether the order of detention which was passed at the relevant time but could not be served was based on sufficient material justifying the order of detention. Remedy to this situation has already been offered by this Court in *Union of India v. Parasmal Rampuria* ((1998) 8 SCC 402), wherein it was observed as under:

“5. ... the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had an opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution of India.””

Having confronted with this, Sri M.A.K. Mukheed, learned counsel for the petitioner, invited our attention to the judgment of this Court in **Durgam Subramanyam vs. Govt., of A.P., rep., by its Chief Secretary, Hyderabad and others**^[2] to submit that a writ of mandamus can be issued even when the detenu is not in detention.

It appears that the Division Bench of this Court in **Durgam Supramanyam (2 supra)** considered **Subhash Popatlal Dave vs. Union of India**^[3]. It appears from the citation that though the petitioner in **Subhash Popatlal Dave (1 supra)** and the petitioner in **Subhash Popatlal Dave (3 supra)** are one and the same, the question that was considered in **Subhash Popatlal Dave (1 supra)** was not considered in **Subhash Popatlal Dave (3 supra)**. The question that was formulated in **Subhash Popatlal Dave (1 supra)** is whether the proposed detenu having absconded or evaded the execution of the detention order, who subsequently, challenged the order of their detention even at the pre-execution stage after a long lapse of time could take advantage of non-execution and challenge the detention order, which remained unexecuted. This question was answered in the negative.

In the circumstances and having considered that the petitioner/detenu is absconding and/or has evaded execution of the

detention order, we have no option but to dismiss the writ petition.
Order accordingly. Dismissal of the writ petition shall not preclude the petitioner/detenu from challenging the order of detention, if he surrenders and/or if the detention order is executed.

Miscellaneous petitions, if any, shall also stand dismissed.

DILIP B.BHOSALE, ACJ

P. NAVEEN

RAO, J

Date: 28.03.2016
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[\[1\]](#) (2014) 1 SCC 280

[\[2\]](#) 2012 SCC Online AP 438 (DB)

[\[3\]](#) (2012) 7 SCC 533