

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

WRIT PETITION NO.23629 OF 2016

DATED:23-11-2016

Between:

Hamidan ... Petitioner

And

The State of Telangana
Rep. by its Chief Secretary
General Administration (Law and Order) Department,
Secretariat Buildings
Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Smt. B. Mohana Reddy

COUNSEL FOR THE RESPONDENT: G.P. for Home (TS)



THE COURT MADE THE FOLLOWING:

ORDER: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Assailing the detention of one Sahil Khan, son of the petitioner, this writ petition is filed for issue of habeas corpus.

2. A perusal of the detention order dt.05.06.2016 passed by respondent No.2 shows that the detenu was detained 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 (for short, 'the Act'). The detenu was termed as 'goonda' based on Crime No.171 of 2016 registered for the offences under Section 379 and 420 of IPC and Crime No.164 of 2016 registered for the offences under Sections 379, 420 and 511 of IPC, of Langer House Police Station. In the grounds of detention, with regard to Crime No.171 of 2016 it was alleged that on 08.04.2016 the detenu diverted the attention of the complainant, Mr. Shaibaz Khan, S/o. Pasha Khan, in State Bank of India Automatic Teller Machine (SBI ATM) at Langer House by covertly pressing a button on the keypad resulting in hang up of the transaction and advised the complainant to visit another ATM and that when the complainant and his friend left the ATM centre, the detenu committed theft of Rs.14,000/- from the complainant's account through fraudulent transactions. A similar allegation was made in Crime No.164 of 2016 with the only difference that the detenu could not succeed in taking away any money as the complainant in this crime has realised the deviant behaviour of the detenu and prevented him from committing further mischief. In the first paragraph of the detention order, respondent No.2 has observed that the detenu has been "indulging in series of property offences by diverting attention of the ATM users and committing theft of their money in the limits of Hyderabad Police Commissionerate"

creating large scale fear and panic among the people and adversely affecting the public order. Section 2(g) of the Act defines 'goonda' as a person who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

3. Under Section 3 of the Act, the detaining authority is conferred with the power to detain *inter alia* a goonda. Thus, in order to invoke the provisions of the Act for detaining a person, he must fall within the definition of the offenders described under Section 3 of the Act who include the 'goonda'. For terming a person as 'goonda' he must be a habitual offender. Neither the detention order, nor the counter affidavit has referred to any previous criminal background of the detenu. Except the two criminal cases referred to above, the detenu is not alleged to have any other criminal history. In our opinion, the two instances alleged to have been committed within a time span of three weeks from each other, do not justify respondent No.2 to term the detenu as 'habitual offender' and consequently brand him as 'goonda' for the purpose of invoking the provisions of the Act, which is an exception to ordinary penal laws. The nature of the offences alleged against the detenu are ordinary criminal offences which could be dealt with under ordinary criminal laws. The law is well-settled that unless the activities of an offender are such that they disturb the even tempo of public life, thereby disturb maintenance of public order, the provisions of the preventive law which are held to be draconian cannot be invoked (See *Dr. Ram Manohar Lohia v. State of*

*Bihar*¹, *Pushkar Mukherjee v. State of West Bengal*², and *Shymal Chakraborty v. Commissioner of Police, Calcutta*³).

4. The State cannot use the provisions of the Act as an effective substitute for ordinary criminal laws to deal with normal offenders causing disturbance to law and order as opposed to disturbance to public order. As the two offences alleged against the detenu cannot be said to disturb maintenance of public order and they can be effectively dealt with under ordinary penal laws, and that as a matter of fact the two criminal cases have already been registered and the detenu was under judicial custody even as on the date of passing of the detention order, we do not find any justification for respondent No.2 to invoke the provisions of the Act and pass the impugned detention order.

5. In the light of the aforementioned reasons, the writ petition is allowed and the impugned detention order is set aside. The detenu is directed to be released from the detention forthwith, unless he is under judicial custody as on today in connection with the two crimes referred to above.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

23-11-2016

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Note: LR copies to be marked.
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¹ AIR 1966 SC 740

² (1969) 1 SCC 10

³ (1969) 2 SCC 426