

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.37250 OF 2015

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

The petitioner viz., Smt. Mahmooda Begum, who is grand mother of Ahmed Hussain alias Amer Hussain alias Amer (detenu), sought a writ of *Habeas Corpus* to quash the order of detention, dated 05.04.2015, passed by respondent No.2, the Commissioner of Police, Hyderabad, whereby the detenu was detained under the provisions of Telangana Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986 (AP Act 1/1986).

2(a) The facts would show that in exercise of the powers conferred under Sub Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986 (AP Act 1/1986) (for short 'the Act') read with G.O. Rt. No.775, General Administration (Law & Order) Department, dated 10.03.2015, the Commissioner of Police, Hyderabad City, passed the impugned detention order recording his satisfaction from the material placed before him that the

detenu is habitually engaging himself in unlawful acts and creating large scale fear and panic among the general public and thus, he is a 'goonda' as defined under Clause (g) of Section 2 of the Act and with a view to prevent him from affecting adversely the maintenance of public order, the provisions of the Act should be invoked to detain him. Thus, the Commissioner of Police passed order detaining the detenu from the date of service of the detention order and lodged him in Central Prison, Cherlapalli, Ranga Reddy District. The grounds for detention were also drawn on the same day along with the order of detention.

(b) The detenu was taken into preventive custody on 07.04.2015 and on the very same day he was served with the order and grounds of his detention and thereafter, the Government by issuance of G.O. Rt. No.1111, General Administration (Law & Order) Department, dated 15.04.2015, approved the order of detention passed by the Commissioner of Police. The matter was placed before the Advisory Board, which, having heard the petitioner and perusing the records and written representation of the detenu, has submitted its opinion in the form of report, dated 15.05.2015, opining that there is sufficient cause for detention of the detenu. The Government of State of Telangana having considered the report of the Advisory Board and the material available on record, in exercise of the powers under Sections 12 and

13 of the Act, confirmed detention of the detenu for a period of twelve (12) months from the date of his detention

i.e., 07.04.2015. Thus, the order of detention is under challenge in this writ petition seeking Writ of *Habeas Corpus* contending mainly on the following grounds.

(c) There is no material to show that the detenu is a habitual offender and is a 'goonda' within the meaning of Clause (g) of Section 2 of the Act since the detaining authority has taken into consideration the two cases referred to in the impugned order and formed an opinion that the detenu is a habitual offender and is a 'goonda' as it is well settled that figuring a person as an accused in two crimes would not be sufficient to categorise a person as 'habitual offender' as held by this Court in **Kamma Bapuji v. Station House Officer, Brahmasamudram**^[1].

(d) The detaining authority did not mention even a single instance which is detrimental to the public order and thus, it is clear that the impugned detention order was passed in a mechanical way without application of mind.

(e) The detenu was arraigned as accused No.2 in Crime no.202 of 2014 of Nampally Police Station, Hyderabad, for the alleged offences punishable under Sections 147, 148 and 307 of the Indian Penal Code (IPC)

read with Section 149 IPC and Section 7(1) of Criminal Law Amendment Act, but he was released on bail. It is according to the petitioner that the said crime is a counter case to Crime No.226 of 2014 for the offences punishable under Sections 146, 147, 148, and 307 IPC read with Section 149 IPC and Section 7(1) of Criminal Law Amendment Act, registered by the Humayun Nagar police Station, Hyderabad, wherein, the detenu was a victim and suffered injuries and treated in Princess Durru Shehvar Hospital as can be seen from MLC No.2601, dated 20.06.2014, and the complainant in Crime No.202 of 2014 was accused in Crime No.226 of 2014. The police have not yet chosen to file charge-sheet in Crime No.202 of 2014. The petitioner, thus states, had the detaining authority examined the record in proper perspective and applied its mind, it would have unravelled that the Crime No.202 of 2014 is

a counter case and the detenu was falsely implicated and the same could not have termed as detriment to the public order and thus, the impugned order of detention suffers from non application of mind.

(f) Concerning the second case, the petitioner states that in Crime No.162 of 2014 for the offences punishable under Sections 397 and 326 IPC read with Section 34 IPC of Dabeerpura Police Station, Hyderabad, the detenu was released on bail on 13.01.2015 and

thereafter, he was not involved in any illegal activity and thus, passing the impugned order of detention basing on Crime No.162 of 2014 is arbitrary and unwarranted.

(g) The petitioner states that the above two instances relate to only law and order problem and not public order and the distinction between the public order and law and order problem is now well settled by a catena of judicial pronouncements of the Constitutional Courts.

(h) The order of detention has to be passed to prevent subversion of public order but not in aid of maintenance of law and order and a person cannot be detained on a mere ground that he figured as accused in two crimes. Thus, the impugned order of detention is bad in law as it suffers from vice of non-application of mind and the grounds of detention do not come within the ambit of public order.

(i) The petitioner states that the detenu belongs to a respectable family pursuing his graduation, taking care of her health after demise of her son and daughter-in-law and elder brother of the detenu is an Advocate, but, due to some family issues, he is not in good terms with the detenu; when the detenu was falsely implicated in four (4) cases i.e., Crime Nos.56, 57, 58 and 59 of 2010, the Juvenile Justice Board has set him free from all charges by the order, dated 12.10.2012. She states that

subsequently, in the year 2012, on coming to know that Mirchowk Police Station has opened a rowdy-sheet against the detenu, he approached this Court by filing W.P. No.28602 of 2012 and thereafter, the Mirchowk Police Station closed the rowdy-sheet by the order, dated 06.03.2014, only after filing contempt case in C.C. No.393 of 2014. It appears that due to political influence and local leaders, keeping personal grudge with the detenu for filing contempt case, the subordinates have given wrong information to the Commissioner of Police, Hyderabad, who has passed the impugned order of detention in a mechanical manner and, therefore, sought to set aside the same.

(j) Respondent No.2 has filed counter resisting the request. Concerning Crime No.202 of 2014, he states that it relates to an event that took place on 19.06.2014 wherein, the complainant therein viz., Habeeb Osman, who was a resident of A.C. Guards, Hyderabad, was informed by one of his friends that some persons were waiting at Taiba Hotel to beat him, on which, when he along with his friend viz., Mohd Kaleem went to Taiba Hotel to enquire the same, but having found that none present there, when they were returning from Masab Tank towards Mahavir Hospital, on the way at about zero hours, detenu and his associates attacked him and his friend with deadly

weapons causing serious bleeding injuries with an intention to kill them and the members present at the hospital, terrified and consequently, neither the passers-by nor the attendants of the patients at the hospital, which is one of the crowded hospitals in the city, came to the rescue of the victims and they remained as mute spectators. The detenu was arrested on 21.06.2014 and remanded to judicial custody and was enlarged on bail on 16.07.2014.

(k) Thereafter, in less than four (4) months, on 25.10.2014, while one Mohd. Taher Younus, owner of Western Union Business, after closing his office, was proceeding to his house by carrying cash of Rs.4.00 lakhs in the dickey of his Honda Activa two wheeler bearing No.AP-11-AT-6922, and when he reached near Quli Qutub Shah Urban Development Society (GHMC Office), the detenu and his associates looted the cash from him and the manner in which, the offence was committed terrifying the people, as it was about 9.10 p.m., caused fear and panic and none of the locality people nor passers-by came to the rescue of the victim. The detenu was arrested on 22.11.2014 and the stolen cash of Rs.3,67,000/- was recovered from his possession and he was remanded to judicial custody and later he was released on bail on 13.01.2015. The detaining authority, therefore, having satisfied that recourse of ordinary

criminal proceedings are not sufficient to curb the prejudicial activities of the detenu affecting the public order adversely and the series of offences committed by the detenu since established that the activities of the detenu answers the description of definition of 'goonda' in Clause (g) of Section 2 of the Act, passed the detention order. Respondent No.2 denied the allegation of non-application of mind.

3. Heard Sri Mohd. Islamuddin Ansari, learned counsel for the petitioner, and learned Government Pleader for Home for the respondents.

4. Learned counsel for the petitioner mainly attacking the Detention Order on the ground that it suffers from want of subjective satisfaction and therefore, vitiated. In an attempt to substantiate the said argument, he would submit that the grounds on which the order of detention was passed since relates to two crimes only, the detenu does not answer the description of 'goonda' as defined in Section 2(g) of the Act (1 of 1986). He would submit that absolutely there is no material to show that the detenu is a habitual offender and is a 'goonda' within the meaning of Section 2(g) of the Act and it is well settled that figuring a person as an accused in two crimes would not be sufficient to categorise the person as a habitual offender in view of the decision in **Kamma Bapuji's Case** (Supra 1).

5. Learned counsel would also submit that the 2nd respondent, in passing the detention order, did not mention even a single instance which, according to the 2nd respondent, is detrimental to public order and thus, it reflects that the said order was passed in a mechanical manner and without application of mind.

6. Learned counsel would further submit that Crime No.202 of 2014 registered for the alleged offences punishable under Sections 147, 148 and 307 IPC r/w 149 IPC, which is one of the crimes on the basis of which the detention order was passed is a counter case to Crime No.226 of 2014 of Humayun Nagar Police Station registered for the offence punishable under Sections 146, 147, 148, 307 IPC read with 149 IPC, and in the said crime, the detenu herein is a victim who received injuries and treated in Durru Shevar Hospital is evidenced by Medico-Legal Case No.2601 dated 20.06.2014 and the complainant in Crime No.202 of 2014 is the accused in the said Crime. According to him, the police have not yet chosen to file charge sheet by the date of filing instant writ petition in Crime No.202 of 2014 and the very fact that the 2nd respondent omitted to examine the record in proper perspective and apply its mind though, the said case is a counter case and the detenu is falsely implicated in the said case, the same cannot be termed as detrimental to

public order and cannot be construed as a ground of detention and thus, suffers from non-application of mind and, therefore, the impugned order is liable to be set aside. He would also submit that in Crime No.162 of 2014 of Dabeerpura Police Station, registered for the offences punishable under Sections 397 and 326 IPC r/w 34 IPC, the detenu was released on bail on 13.01.2015 and thereafter, the detenu was not at all involved in any illegal activity and, therefore, the power exercised under Sub-Section (2) of Section 3 of the Act in passing the impugned detention order based on Crime No.162 of 2014 is unwarranted. It is also his submission that though, the detenu has got mentioned in his representation that Crime No.202 of 2014 was a counterblast to case lodged by police in Crime No.216 of 2014 of Humayun Nagar Police Station, neither the detaining authority nor the authority confirming the detention order looked into that aspect and ignoring the same, passed the detention order by the 2nd respondent and order confirming the detention by the 1st respondent.

i) The learned counsel pointed out that though, in the written representation submitted to the Advisory Board, the detenu has specifically mentioned that Crime No.202 of 2014 foisted against him as a counter case to Crime No.226 of 2014 in which he received injuries, the

Detaining Authority while answering the said allegation mentions in the counter that the detenu ought to have put forth that fact to the Detaining Authority/Advisory Board/Government by way of representation and that the detenu has not filed any evidence to the effect that Crime No.202 of 2014 is the counter case foisted against him, would itself show that the Detaining Authority has examined the material in a callous manner without application of mind. According to the learned counsel for the petitioner, para '2' of the representation submitted to the Advisory Board by the detenu, would clearly show that he did agitate that aspect of the case in emphatic terms and, therefore, it is his argument that this circumstances alone is sufficient to arrive at that the detention order was passed in a mechanical manner.

ii) It is his submission that the detention order is absolutely silent as regards the chain of events which permit the detaining authority to come to a conclusion that the detenu is required to be detained under the detention laws and his unlawful activities are required to be curbed by the detention order and since the detention order is based on non-existing grounds vis-à-vis prevention of public order, and hence the detention order is liable to be set aside.

iii) The learned counsel would also submit that during the year 2010, four crimes in Crime Nos. 56, 57, 58

and 59 of 2010 were registered against the detenu and in all these cases, the Juvenile Justice Boards have already set him free from all the charges by order dated 12.10.2010, when the Mirchowk Police learnt the same and opened a rowdy sheet on which the detenu was constrained to file W.P.No.28602 of 2012 and the Mirchowk Police have closed the rowdy sheet after proceedings in Contempt Case No.393 of 2014 were initiated. Thus, according to him, under the influence of political leaders, the subordinate officers of the detaining authority supplied wrong information with a *mala fide* intention and the 2nd respondent passed the impugned order in a mechanical manner. Therefore, it is his submission that the order of detention is not free from the vice of *mala fides* and, therefore, liable to be set aside.

iv) The learned counsel for the petitioner would place reliance on a decision rendered by this Court in W.P.No.18142 of 2012 to substantiate the ground that the detenu cannot be treated as a 'habitual offender'.

7. To substantiate his submissions that the detention order suffers from want of subjective satisfaction, he places reliance on the decision of this Court in **V. Muragesh v. Collector & District Magistrate, Chittoor and others**^[2].

i) On the subjective satisfaction, the learned counsel places reliance on the decision of this Court in W.P.No.16943 of 2015.

8. The learned Government Pleader *inter alia*, contends that reasonableness of satisfaction of the detaining authority cannot be questioned in a Court of law and the adequacy of material on which the said satisfaction purports cannot be examined in a Court of law. To fortify the same, he places reliance on a decision of the Constitution Bench of Hon'ble Supreme Court in **Rameshwar Shaw v. District Magistrate, Burdwan**^[3].

i) On the proposition that this Court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent and proximate and relevant, he places reliance on the decision of the Hon'ble Supreme Court in **Commissioner of Police v. C. Anita (SMT)**^[4].

ii) In the context of answering the argument of the learned counsel for the petitioner that the alleged involvement of detenu in two crimes, more particularly, when he was set at liberty in four crimes by the Juvenile Justice Board relating to the year 2010, the learned Government Pleader for Home would contend that a single act can be the basis of detention and the number of

acts is not material. To fortify his submission, the learned Government Pleader would place reliance on the decision of the Hon'ble Supreme Court in **Union of India and another v. Chaya Ghoshal (Smt) and another**^[5].

iii) In regard to opinion of the Board as well as the order of the government rejecting the representation of the detenu, he places reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Haradhan Saha v. The State of West Bengal and others**^[6], in which decision the Hon'ble Supreme Court has also explained the nature of power exercised in ordering preventive detention.

iv) In reply to the submission of the learned counsel for the petitioner that the offences punishable against the detenu in both the crimes are the offences under the provisions of the Indian Penal Code and the ordinary law would take care of the said offences and there is absolutely no need to invoke the provisions of the Act 1 of 1986, the learned Government Pleader would submit that the material on record shows that the detenu is a habitual offender and the same cannot be questioned based on stale instances.

v) Learned Government Pleader would submit that in these two crimes i.e. Crime Nof.202 of 2014 of

Dabeerpura Police Station and Crime No.162 of 2014 of Nampally Police Station which constitute the basis for passing of the detention order, one Hyder Khan was also an associate of the detenu herein who was arraigned as accused No.3 in the former crime and as 4th accused in the latter crime and when similar detention order like the one herein was passed against the said Hyder Khan by the very same detaining authority, challenging the said order, W.P.No.12928 of 2015 filed by one Farha Khan, the mother of the detenu was dismissed by a Division Bench of this Court by order, dated 24.08.2015, scoring out similar grounds agitated and, therefore, the order impugned in the instant case cannot be withheld.

vi) The learned Government Pleader has also placed a copy of the order in W.P.No.12928 of 2015 for perusal of this Court, and sought dismissal of the writ petition.

9. We would like to take up the definition of 'goonda' occurring in the Act initially. The expression 'goonda' is defined in Section 2(g) of the Act, meaning a person, who either by himself or as a member or leader of gang habitually commits or attempts to commit or abets commission of offences punishable under Chapter XVI, Chapter XVII or Chapter XXII of IPC. When examined the offences alleged to have committed by the detenu in the two crimes, Crime No.162 of 2014 and Crime No.202 of

2014 of Dabirpura Police Station and Nampally Police Station, respectively, they are punishable under Section 394 IPC in the former crime and under Sections 147, 148, 307 read with 149 IPC and under Section 7(1) of the Criminal Law Amendment Act in the latter crime falling within the ambit of Chapters XVI and XVII of IPC, thus, satisfying the preliminary requirement to hold the expression of 'goonda' is attracted to the detenu.

10. The learned counsel would submit that just basing on the alleged acts in the crimes referred to in the detention order, the detenu cannot be treated as a habitual offender. It is, according to him, that the detenu has been arraigned in two cases only and merely because he is arraigned in two cases, he cannot be said to be a habitual offender, more particularly, when there is no continuity of offences being committed by the detenu as the crimes leveled against the detenu relate to the year 2014 whereas, the detention order was passed on 05.04.2015. He places reliance on the judgment of a Single Judge of this Court in the case of **K. Suresh Babu v. The Superintendent of Police, Anantapur District**^[7], in the context of the expression 'habitual', and hence he would submit that mere alleged involvement of a person in two criminal cases could not be described as habitual offender and at least more than two instances should be present before a person could be described a 'habitual

offender’.

i) The learned single Judge in **Suresh Babu’s Case** (Supra 7) placed reliance on the decision of a three Judge Bench of the Hon’ble Supreme Court in **Vijay Narain Singh v. State of Bihar** ^[8] wherein the Hon’ble Supreme Court held, that the expression ‘habitual’ would mean ‘repeatedly or persistently, implying a threat of continuity stringing together similar repetitive acts and a single act or omission would not characterize an act as habitual’. The learned single Judge also placed reliance in **Majid Babu vs. Government of A.P.** ^[9], in the context of opening of a rowdy Sheet under Standing Order 742 of Andhra Pradesh Police Standing Orders, holding that two instances of involvement in criminal cases would not make a person ‘habitual offender’ and at least more than two instances should be present before describing a person as ‘habitual offender’. To the same effect was the decision in **Kamma Bapuji’s Case** (Supra 1) referred to in the said judgment by the learned single Judge. Therefore, the submission of learned counsel is that in the instant case since the detention order was based on two instances only, the detenu cannot be construed as a habitual offender and, therefore, does not answer the description of ‘goonda’ contained in Section 2(g) of the Act and the detention order of the 2nd respondent is,

therefore, vitiates and so also the order passed by the 1st respondent confirming the detention order taking into consideration the opinion expressed by the Advisory Board.

11. As an answer to the said submission, the learned Government Pleader places reliance on the decision of the Hon'ble Supreme Court in **Chaya Ghosal's Case** (Supra 5) emphasizing that it is the impact of the act and not the number of infractions which is relevant in ordering preventive detention by the authority concerned. We feel it apt to extract the expression of the Hon'ble Supreme Court contained in paragraph No.23 thus:

“So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not the number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran to crores of rupees, as alleged by the Detaining Authority.

The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's conclusions in this regard are therefore not sustainable.”

12. Further, we would like to observe that the

decisions on which the learned counsel for the petitioner placed reliance were rendered in the context of opening of rowdy sheet under Codal Rule that being the Standing Order 742 of the Andhra Pradesh Police Standing Orders.

13. On subjective satisfaction, the submission of the learned counsel for the petitioner is that the detaining authority though, mentioned in Page 2 of the detention order passed by the

2nd respondent that the detenu continued to indulge in the similar offences in public places which are detrimental to the public order, no material is placed, thus, reflecting non-application of mind while passing the said order.

14. In the said context, the learned counsel for the petitioner places reliance on a decision of the Hon'ble Division bench of this Court in **V. Murugesh's Case** (Supra 2). The facts therein would show that out of eight offences registered against the detenu therein he was arrested in five cases whereas in 3 cases he was not arrested, but in the detention order it was recorded that he was enlarged on bail in all the cases. In that context the Hon'ble Division Bench held in paragraph '11' thus:

"Thus from the above, it is evident that out of the eight forest offences registered against the detenu, he was arrested and released on bail in five cases, while in three cases, he was not even arrested. But curiously, in the order of detention, respondent No.1-Detaining Authority has recorded that the detenu was released on bail in all

the cases. This shows that respondent No.1-Detaining Authority, has not applied his mind to the facts of the case. Respondent No.1-Detaining Authority, did not even bother to refer to the details of the bail applications moved by the detenu, nor the details of the bail orders nor the conditions on which bail was granted to the detenu. Obviously, he could not have recorded the details of the bail applications moved by the detenu and the bail orders granted and the conditions on which the bail was granted, because it is the admitted case of the learned Assistant Government Pleader representing the respondents that they were not placed before respondent No.1-Detaining Authority. In *State of U.P. v. Kamal Kishore Saini* (1) (1988) 1 SCC 287, the Apex Court held that it is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatorily required under the Act. In *Ahmedkutty v. Union of India* (2) (1990) 2 SCC 1, the Apex Court held bail application and bail order were vital materials for consideration and if those were not considered the satisfaction of the detaining authority itself would have been impaired.”

i) The learned Government Pleader that while referring to the purpose and intent of the Preventive Detention Act, would submit that passing of order of detention is based on jurisdiction of suspicion and in support of the same, he relied on the decision of Hon’ble Supreme Court in **C. Anitha’s Case** (Supra 4).

ii) It would be profitable to refer to the expression of the Hon’ble Supreme Court with regard to the purpose and intent of preventive detention under the Act contained in Para ‘5’ thus:

“Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The action of Executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in the society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meanings provide the justification for the laws of preventive detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To lose our country by a scrupulous

adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. These aspects were highlighted in *Union of India v. Amrit Lal Manchanda and Ors.*, [2004] 3 SCC 75."

iii) The Hon'ble Supreme Court, while observing that the two concepts, public order and law and order having well defined contours, observed in paragraph No.13 thus:

"The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" justice as "public order comprehends disorders of less gravity than those affecting "security of State". (See *Kuso Sah v. The State of Bihar and Ors.*, [1974] 1 SCC 185, *Harpreet Kaur v. State of Maharashtra*, [1992] 2 SCC 177; *T.K. Gopal v. State of Karnataka*, [2000] 6 SCC 168 and *State of Maharashtra v. Mohd. Yakub*, [1980] 2 SCR 1158."

iv) In the same decision, the Hon'ble Supreme Court concludes in paragraph No.15 holding thus:

"The Court cannot substitute its own opinions for that of the detaining authority when the grounds of detention are

precise, pertinent, proximate and relevant. That is the case here. There is no vagueness or staleness. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which have been precisely stated in paragraph 3 of the grounds of detention quoted above. The two incidents referred to show as to in what manner the detenu was demanding money from whosoever was purchasing land and giving threats to kill if the demands were not met. The incidents clearly substantiate the subjective satisfaction arrived at by the detaining authority as to how the acts of the detenu were prejudicial to the maintenance of public order. These aspects have not been considered by the High Court. Learned counsel for the detenu submitted that even if it is so the judgment of the High Court should not be set aside and the matter could be remitted back to it for fresh decision. We find no substance in such a plea. The order of detention has a specific purpose to serve. That being so, we set aside the judgment of the High Court. The detenu shall forthwith surrender to custody to serve the remainder period of sentence. The appeal is allowed.”

v) In the same context, the learned Government Pleader also places reliance on **Haradhan Saha’s Case** (Supra 6), as to the distinction in exercise of power between preventive detention and punitive detention and that the power of preventive detention is precautionary power exercised in reasonable anticipation and it may or may not relate to an offence and not a parallel proceeding and does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched.

15. Some of the aspects to which our attention is

drawn by the learned counsel for the petitioner are, that the detenu is arraigned as Accused No.2 in Crime No.202 of 2014 for the alleged offences under Section 147, 148, 307 read with 149 IPC and under Section 7(1) of the Criminal Law Amendment Act, of Nampally Police Station in which crime, the detenu was already released on bail and it is a counter case to Crime No.226 of 2014 for the offences punishable under Sections 146, 147, 148, and 307 IPC read with Section 149 IPC and Section 7(1) of Criminal Law Amendment Act, registered by the Humayun Nagar police Station, in which crime, the detenu is a victim having received injuries and treated in Princess Durru Shehvar Hospital, evidenced by MLC No.2601 dated 20.06.2014 and the complainant in Crime No.202 of 2014 is an accused and the police have got knowledge about the Crime No.202 of 2014 and charge sheet was not filed even by the date of filing this writ petition and the 2nd respondent, the detaining authority though, is obligated with the duty to examine the record in proper perspective and apply its mind in passing the detention order, but the said aspect was not reflected in the detention order and the ground relied upon by the detaining authority basing on Crime No.202 of 2014 to construe the detenu as 'goonda' suffers from non-application of mind and, therefore, the impugned order is liable to be set aside. Next aspect relates to the submission that under the political influence of local leaders, the concerned police

officials would not have brought to the notice of detaining authority with a *mala fide* intention that the rowdy sheet opened by the concerned police was closed only when the contempt case was filed by the detenu in enforcing the order passed by this Court in W.P.No.28602 of 2012 as the police did not close the rowdy sheet and thus, the detention order suffers from the said infirmity.

i) The learned counsel also points out yet another aspect that the order of detention is absolutely silent as regards the chain of events, in other words, continuity in committing the offences which permit the detaining authority to come to a conclusion that the detenu is required to be detained under the detention laws and his unlawful activities are required to be curbed by the detention order, and, therefore, the same is liable to be set aside as it is based on non-existing grounds. One other aspect pointed out is, the detaining authority has failed to consider that the detenu was set at liberty by the Juvenile Justice Board in four crimes referred to in the above, which would reflect his false implication. Still further submission is that the version given in the grounds of detention so far as Crime No.202 of 2014 is concerned, it varies with the version occurring in the complaint, the contents of which are mentioned in the FIR on material aspects of the case. It is, according to him, that the FIR in Crime No.202 of 2014 would show that the complainant

and his associate when were alleged to have been attacked by the detenu herein and the detenu in the order under challenge in W.P.No.12928 of 2015, when raised hue and cry, people arrived and the detenu herein and detenu therein fled away by leaving their bike and with the help of passers-by the injured were brought to Saifabad Police Station and from there they were shifted to NIMS, Hyderabad; whereas, in the grounds of detention so far as this crime is concerned, it is mentioned that the people have been terrified on seeing the said ghastly offence and public order was adversely affected and out of fear of the accused, the passers-by and the locality people including attendants of patients could not come to the rescue of the victims and were mute spectators and it had created panic and insecurity in the minds of the local inmates. Thus, the versions are completely contradictory to each other and reflects that the satisfaction arrived at by the detaining authority was without application of mind in examining the material in proper perspective. These aspects agitated by the detenu and the arguments advanced by the learned counsel for the petitioner, in our considered view, have to be examined in the light of the order passed by this Court in W.P.No.12928 of 2015 in which a similar situation occurs so far as the detenu therein is concerned as he was an associate of the detenu herein, involved in both the crimes i.e., Crime No.162 of 2014 and Crime No.202 of 2014 of different police stations mentioned above.

16. Turning to whether the order of preventive detention passed by the 2nd respondent and the order of confirmation of the

1st respondent are based on proper consideration of material, we would like to refer to the decision of the Hon'ble Division Bench of this Court in **Farha Khan v. The Commissioner of Police & Addl.District Magistrate (Executive), Hyderabad & others** [\[10\]](#).

The fact situation therein would reflect that the detenu, Hyder Khan therein has been involved in both the crimes in which the detenu herein is involved. The detenu therein is arraigned as Accused No.4 in Crime No.162 of 2014 and Accused No.3 in Crime No.202 /2014 besides his involvement in Crime No.298 of 2014. The Division Bench referring to the manner in which the offences have been committed in Crime Nos.162 of 2014 and 202 of 2014 and its impact, while upholding the order of preventive detention passed by the Commissioner of police, the 2nd respondent herein observed that the order was rested upon proper consideration of material brought before the Commissioner. Further observation of the Hon'ble Division Bench is thus:

“....If, a young person is hence not prevented from indulging in any further such crimes, the society at large will have to bear the brunt of it. It is for prevention of further indulgence, the order has been passed under Subsection 2 of Section 3 of the Act by the detaining

authority. Therefore, we do not find any merit in the criticism launched by the learned counsel for the detenu.”

The detenu therein was prosecuting B.Tech., course II year in

a private engineering college in the city. By referring to his attendance and safeguarding his interest in the direction of reforming himself the Hon’ble Division Bench suggested certain measures granting liberty to the State Government to entertain the request to be made on behalf of the detenu by his mother and consider objectively, and pass appropriate orders.

17. In the instant case, the writ affidavit does not reflect whether the detenu is prosecuting any professional course. Therefore, we are not inclined to take such a view giving liberty, to the detenu to make a request to the Government. When the co-accused who is the detenu in W.P.No.12928 of 2015 involved in both the crimes on the basis of which the detention order was passed therein, and the detention order and the order of confirmation of detention passed by the Government were upheld by the Hon’ble Division Bench of this Court, it is difficult for us to take a different view so far as the detention order and order of confirmation passed by the respondents against the detenu herein are concerned. Hence, in our view, the points raised by the learned counsel for the petitioner, referred to in the above, do not attain much significance.

18. We, therefore, hold that the order of detention passed by the 2nd respondent is based on subjective satisfaction of the material brought before him and, therefore, we do not find any legal infirmity in exercise of power under Section 2(3) of the Act by the detaining authority in passing the detention order and the order of confirmation passed by the 1st respondent validating it.

19. We find no merit in the writ petition. The writ petition is, accordingly, dismissed. No order as to costs.

20. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of.

G. CHANDRAIAH,

J

A. SHANKAR NARAYANA, J

April 04, 2016.

PV/KSM

[\[1\]](#) 1997 (6) ALD 583

[\[2\]](#) 2013 (1) ALT 176 (D.B)

[\[3\]](#) AIR 1964 SC 334(1)

[\[4\]](#) (2004) 7 SCC 467

[\[5\]](#) (2005) 10 Supreme Court Cases 97

[\[6\]](#) (1975) 3 Supreme Court Cases 198

[\[7\]](#) WP No.18142 of 2012

[\[8\]](#) AIR 1984 SC 1334

[\[9\]](#) 1987 (2) ALT 904

[\[10\]](#) . W.P. No.12928 of 2015, dated 24-08-2015