

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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WRIT PETITION No. 4646 of 2016

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ORDER: (per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is laid against the detention order of the 2nd respondent passed vide SB(I) No.197/PD/S-1/2015 dated 28.04.2015, and confirmed by the 1st respondent in G.O.Rt.No.1967 dated 15.07.2015, whereby the detenue viz., Abood Bin Jahi @ Abood, S/o Haji Bin Mohammed, was detained and lodged in Central Prison, Cherlapally. The petitioner, who is the mother of the detenu, assails the order of detention as illegal, arbitrary and violative of principles of natural justice and seeks a writ of Habeas Corpus for release of her son forthwith.

2. Brief facts of the case are that the 2nd respondent, by invoking the provisions of Sub-Section 2 of Section 3 of the Telangana Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act 1986 (for short, 'the Act') passed the detention order dated 28.04.2015 and detained and kept the detenu in Central Prison, Cherlapally on the ground that the detenu was involved in as many as 20 cases and committed acts which are prejudicial to public order, and he is likely to be released on bail. The said detention order was approved by the 1st respondent vide G.O.Rt.No.1967 dated 15.07.2015.

The details of 20 cases in which the detenu is said to have been involved are shown in the detention order dated 28.04.2015. In the 20th case i.e., Crime No.76 of 2015 of Abid Road Police Station registered for the offence punishable under Section 382 IPC, it is stated as under:

“...I am aware that you were arrested on 12.4.2015 in Cr.No.76/2015 of Abid Road PS and remanded to judicial custody. You are still in judicial custody in Cr.Nos.260/2014, 7/2015, 25/2015, 57/2015 and 76/2015 of Abid Road PS and 73/2015 of Chaderghat PS. I believe that there is a genuine possibility of your release on bail and further on being released you would further indulge in the similar activities which are prejudicial to maintenance of public order.

As per the clause (g) of section 2 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986, a “Goonda” means “a person, who either by himself or as a member of or leader of 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.

Thus, you have indulged in the acts of goondaism by acting as a member of gang and committed a series of offences of snatching of Mobile Phones and Handbags from the women folk and male persons in public streets and thus you have created terror and fear in the minds of the public specially women, who constitute 50% of the population and thereby you are disturbing the public order and tranquillity in the area. Your anti-social activities have been causing a feeling of insecurity in the minds of the public on a regular basis. The said activities are prejudicial to the maintenance of public order. Further, your acts have been adversely affecting the maintenance of public order and peace in the locality.

It is imperative to prevent you from acting in any manner prejudicial to the maintenance of public order. I feel that recourse to normal law may not be effective deterrent in preventing you from indulging in such further activities prejudicial to the maintenance of public order in the area, unless you are detained by invoking the provisions under the Telangana Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act 1986 (Act No.1 of 1986).

Hence after careful consideration of all facts and circumstances mentioned above and the material placed

before me, I am satisfied that the provisions of the Telangana Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act 1986 should be invoked and you should be deained under Sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act 1986 r/w G.O.Rt.No.775, General Administration (Law & Order) Department, dated 10-3-2015, with a view to preventing you from acting in any manner prejudicial to the maintenance of public order.”

3. Mr. Mohd. Ashraf Ali, learned counsel appearing on behalf of the petitioner submitted that the detention order against the detenu issued by the 2nd respondent is illegal inasmuch as it has been passed by the said respondent without producing the detenu before any Magistrate or on any judgment or sentence passed by any Court of Law; and that the 1st respondent passed the G.O.Rt.No. 1967 dated 15.07.2015 solely on the basis of the order of the 2nd respondent, without verifying proper records.

4. Learned counsel for the petitioner further submitted that the detenu has not been provided copy of detention order and other documents in Urdu, moreover, the contents of the detention order not properly explained so as to enable the detenu to represent his grievances before the Government or the Chairman of the Advisory Board. The learned counsel submitted that the 2nd respondent served the copy of the detention order in English language where as the detenu is illiterate and can only speak and understand Urdu language. Thus, he was deprived of his right to know the contents of the impugned detention order. Therefore, the detenu could not

make proper representation and the said factum was not considered by the Advisory Board.

5. To strengthen his submissions, the learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in **Ibrahim Ahmad Batti v. State of Gujarat**^[1] wherein the Supreme Court held that “...*non-supply of Urdu translations of these documents has clearly prejudiced the petitioner in the exercise of his right to make an effective representation against his detention and hence the safeguard contained in Art 22(5) is clearly violated.*”

6. Mr. Ashraf Ali, learned counsel for the petitioner, has argued second ground that by the detention order in question, the detenu has been detained for twelve months which is contrary to Sub-Section (2) of Section (3) of the Act and against the Article 22(5) of the Constitution. To bolster his submission, the learned counsel relied on the decision in **Cherukuri Mani w/o Narendra Chowdari v. Chief Secretary, Government of Andhra Pradesh & Ors.**^[2]. In paragraph 13 of the said judgment, it was recorded as under:

“13. Proviso to Sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression “extend such period from time to time by any period not exceeding three months at any one

time” assumes significance in this regard.”

7. Learned counsel for the petitioner submitted that Section 3 of the Act mandates that the maximum period of detention under the Act is three months whereas by the impugned detention order, the detaining authority has detained the detenu for a period of twelve months.

8. Learned counsel for the petitioner further submitted that the detenu was arrested on 12.04.2015 in Crime No.76 of 2015 as mentioned above and remanded to judicial custody. It is an admitted fact that the detenu was already in judicial custody in Crime Nos.260/2014, 7/2015, 25/2015, 57/2015 and 76/2015 of Abid Road Police Station and 73/2015 of Chaderghat Police Station. The detention order was passed on the ground that there was a genuine possibility of release of detenu on bail and if so he may indulge in similar activities prejudicial to the maintenance of public order.

9. In **Ram Manohar Lohia v. The State of Bihar**^[3], the Supreme Court has held by majority decision that the expression “public order” was different and does not mean the same thing as “law and order”. The aforesaid view was thereafter relied upon in the case between **Pushkar Mukherjee v. State of West Bengal**^[4], and the confirmation order of detention passed by the Government was declared illegal.

10. It is also the submission of the learned counsel for the petitioner that the detention order should have been clear on the aspect of how many accused were there; how many were

released on bail and how was the possibility of detenu being released. Therefore in the absence of those facts, satisfaction on the detention order is not justified. In support of his contention, the learned counsel places reliance on the judgment of the Hon'ble Supreme Court in **Binod Singh v. District Magistrate, Dhanbad, Bihar**^[5], wherein the detention order which was based on a similar ground was declared as invalid. In the said judgment, the Hon'ble Supreme Court held in paragraph 7 as under:

“... If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised...”

11. On the other hand, Mr. K. Ramakrishna Reddy, the learned Government Pleader representing the respondents submitted that in the detention order dated 28.04.2015, no specific period of detention is mentioned, however, it is recorded that the detenu be detained from the date of service of detention order on him and he be lodged in Central Prison, Cherlapally, Ranga Reddy District. Thus the contention of the petitioner's counsel that the detenu cannot be detained for more than three months has no substance. On this issue, the learned Government Pleader placed reliance on the judgment of the Division Bench of this Court in **Arif Khan v. The State of Telangana**^[6], and submitted that this Court has considered the decision reported in **Cherukuri Mani (2 supra)** in W.P.No.40066 of 2014 and W.P.No.5168 of 2015 along with the principles of law laid down by the Apex Court in **Harpreet Kaur (Mrs) Harvinder Singh Bedi v. State of Maharashtra**

and Anr^[7], and **T. Devaki v. Government of Tamil Nadu and Ors^[8]**.

12. Learned Government Pleader further submitted that the detenu is involved in twenty cases as mentioned in the detention order. The grounds of detention and the documents were supplied to the detenu and made him understand in Urdu to which he acknowledged. The detenu is not an illiterate person. In his Confession-cum-Panchanama dated 30.03.2015 made at Abid Road Police Station in the presence of panchas, the detenu admitted that his father expired when he was seven years old and that he studied upto 9th class in English medium. Thus, the documents provided to the detenu were in English language, and were understood by the detenu in English and Urdu as well.

13. Learned Government Pleader further submitted that the detention order was issued with a view to prevent the detenue from acting in any manner prejudicial to the maintenance of public order. In the case of **Ashok Kumar v. Delhi Administration and Others^[9]**, the Supreme Court in paragraph 13 observed as under:

“The true distinction between the areas of ‘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. The distinction between the two concepts of ‘law and order’ and ‘public order’ is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore

is not determinant of its own gravity. 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.”

14. In support of his contention that the detenu is involved in twenty cases as mentioned in the detention order and it is only after subjective satisfaction of the detaining authority the detention order was passed to prevent the detenu from acting in any manner prejudicial to public order, the learned Government Pleader has drawn the attention of the Court to paragraph 14 of **Ashok Kumar (9 supra)** wherein it was held as under:

“14. Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.”

15. Learned Government Pleader further submitted that the detaining authority, after subjective satisfaction, has passed the detention order and the Courts cannot sit in appeal to disturb the same. To substantiate his contention, the learned Government Pleader relied on the judgment of the Hon'ble Supreme Court in **Commissioner of Plice and Others v. C.Anita (Smt).**^[10]

16. We have heard the learned counsel for the parties.

17. It cannot be disputed that personal liberty is of the widest amplitude covering a variety of rights. Its deprivation shall only be in accordance with the procedure prescribed by law

conformable to the mandate of the Supreme Law, the Constitution, more particularly to Article 21 thereof (**N. Sengodan v. State of Tamil Nadu**^[11]; **Bhut Nath Mete v. State of West Bengal**^[12]). No doubt, preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be zealously watched and enforced by the Court. (**Ram Krishan Bhardwaj v. State of Delhi**^[13]). Article 22(3)(b) of the Constitution of India, which permits preventive detention, is an exception to Article 21 of the Constitution. An exception cannot, ordinarily, nullify the full force of the main rule, which is the right to liberty guaranteed under Article 21 of the Constitution. An exception can apply only in rare cases. The power of preventive detention has to be exercised with greatest care and caution and it is the duty of the Courts to ensure that this power is not abused or misused (**Durgam Subramanyam v. Government of A.P.**^[14]; **Francis Coralie Mullin v. UT of Delhi**^[15]).

18. On a perusal of detention order dated 28.04.2015, we note that a copy of the order was sent to the Superintendent of Jail mentioned above with a request to read and explain the contents of the grounds of detention along with its supporting material in the language known to the detainee and to obtain date of acknowledgment on each page and also obtain a certificate from him in his own handwriting to the effect that the grounds of detention and the documents were read over and

explained to him and he understood them and that he documents are clear and legible. Accordingly, documents were furnished to the detenu on 01.05.2015 to which the detenu acknowledged in his handwriting as under:

**"Date:- 01-05-
2015**

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Acknowledgement / Receipt

I Abood-Bin-Haji @ Abood S/o Haji-Bin-Mohammed Flat No-70, Road No-9, Jalal Bagh Nagar, Kishan Bagh, Hyderabad. Today the Inspector of Police, Abid Road PS Hyderabad reading and explained the Detention Orders under Subsection (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) and also explained the grounds of Detention. I understood the orders and Received the Detention Orders and Grounds of Detention Orders all copies from the Inspector of Police, Abid Road PS., Hyderabad.

**Yours faithfully
Sd/-**

**Abood-Bin-Haji @ Abood
s/o Haji-Bin-Mohammad
Flat No-70, Road No-9,
Jalal Bagh Nagar,
Kishan Bagh, Hyderabad."**

19. Thus, the argument of the learned counsel for the petitioner that the detenu was illiterate and does not understanding English language has no substance as the detenu, in his confessional statement-cum-panchanama dated 30.03.2015 made at Abid Road police station in the presence of panchas, admitted that he studied up to 9th class in English medium.

20. In case of **T. Devaki (8 supra)**, the Hon'ble Supreme

Court has held as under:

“On an analysis of [Section 3](#) of the Act as quoted above, we find no merit in the submission. [Section 3\(1\)](#) confers power on the State Government to detain a bootlegger or drug-offender, or forest-offender or goonda or an offender in immoral traffic or a slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. [Section 3\(2\)](#) empowers the State Government to delegate its power as conferred on it under sub-section (1) to District Magistrate or a Commissioner of Police, if it is satisfied that the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, make it necessary to delegate the power to them. It further provides that the order of delegation shall be in writing and it shall also specify the period during which the District Magistrate or the Commissioner of Police, are authorised to exercise the powers of the State Government under sub-section (1) of [Section 3](#). Proviso to sub-section (2) lays down that the delegation should not be for an unlimited period, instead it should not be for a period of more than three months. If the State Government is satisfied that it is necessary to extend the period of delegation it may amend its order, extending such period from time to time but at no time the extension shall be for a period of more than three months. Once the State Government's power under [Section 3\(1\)](#) is delegated to the District Magistrate or the Commissioner of Police, they are authorised to exercise that power on the grounds, specified in [Section 3\(1\)](#) of the Act. Neither sub-section (1) nor sub-section (2) of [Section 3](#) of the Act require the detaining authority to specify the period of detention for which a detenu is to be kept under detention.

[Section 3\(3\)](#) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. [Section 8](#) requires the detaining authority to communicate to the

detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. [Section 10](#) requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made alongwith the representation made by the detenu as well as the report of the officers made under [Section 3\(3\)](#) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in [Section 13](#) of the Act. [Section 13](#) provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time, it may think proper.”

21. In the case in hand, no doubt, the detenu was involved in twenty cases and the main ground of detention was that he was likely to be released on bail. In view of **T. Devaki (8 supra)**, we do not find any substance in the ground raised by the learned counsel for the petitioner that the detention order ought not to have been passed by the detaining authority detaining the detenu for twelve months and the maximum period of detention in any one instance is three months as per Section 3 of the Act. Not finding any substance in the ground that the detenu cannot be detained for a maximum of twelve months, on perusal of the impugned detention order dated

28.04.2015, nowhere it is mentioned that the detenu was detained for twelve months. In case of **Ujagar Singh v. State of Punjab**^[16], a Constitution Bench of the Supreme Court held that when no period is mentioned in an order, the implication is that the detention is for the maximum period prescribed under the Act. It is not in dispute that maximum detention period prescribed under Section 13 of the Act is 12 months.

22. The Government delegated its power to the detaining authority to pass the detention order within three months and the said order to be confirmed by the Government within a specified timeframe. The confirmation of detention order is not the issue before us, but the fact remains that as per Section 13 of the Act, the maximum period of detention is twelve months. It is not in dispute that the detenu was involved in twenty cases of similar nature, however, the detaining authority has nowhere mentioned in the detention order that in how many cases the detenu was released and in the 20th case i.e. Crime No.76 of 2015, how many accused were involved and how many of them were released on bail. It is settled law that the detaining authority has to specifically mention the reasons for detention and the reasons should not be vague or unclear.

23. In case of **Rameshwar Shah v. District Magistrate, Burdwan and another**^[17], it was held that Section 3 of the Act does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail. The detenu was in judicial custody in Crime Nos. 260/2014,

7/2015, 25/2015, 57/2015 and 76/2015 of Abid Road P.S., and 73/2015 of Chaderghat P.S., at the time of passing the detention order and if an accused is in judicial custody and if there is no imminent possibility of being released on bail, the power of preventive detention should not be exercised as held in **Binod Singh (5 supra)**. It cannot be disputed that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be invalid.

24. A similar issue was dealt by this Court in W.P.No.6510 of 2015 and Batch, dated 29.09.2015, while relying upon the case in **Dwarika Prasad Sahu v. State of Bihar**^[18]; **Shibban Lal Saxena v. State of U.P.**^[19]; **Ram Manohar Lohia (3 supra)**; **Pushkar Mukherjee (4 supra)**; **Biram Chand v. State of U.P.**^[20]). If any one of the grounds is vague or irrelevant, the entire order must fall. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it.

25. Since the satisfaction of grounds of detention has not been properly and clearly mentioned in the impugned detention order, the detention order is vitiated and is liable to be set aside. Moreover, pursuant to the impugned detention order, the detenu was detained on 02.05.2015 and he is going to

complete 12 months which is the maximum detention period.

26. Keeping in view the discussion recorded above and settled legal position, we hereby set aside the detention order dated 28.04.2015. Consequently, the detenu is directed to be released forthwith if he is not wanted in any other case.

27. The writ petition is, accordingly, allowed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

19th April, 2016.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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WRIT PETITION No. 4646 of 2016

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(Order of the Division Bench delivered by
Hon’ble Sri Justice Suresh Kumar Kait)

April, 2016

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[1] 1982 LawSuit (SC) 156
[2] 2014 LawSuit (SC) 395
[3] AIR 1966 SC 740
[4] (1969) 1 SCC 10
[5] 1986 LawSuit (SC) 337
[6] W.P.No.22672 of 2015
[7] (1992) 2 Supreme Court Cases 177
[8] (1990) 2 Supreme Court Cases 456
[9] (1982) 2 Supreme Court Cases 403
[10] (2004) 7 Supreme Court Cases 467
[11] (2013) 8 SCC 664
[12] (1974) 1 SCC 645
[13] AIR 1953 SC 318 = 1953 SCR 708
[14] 2013 (4) ALT 243 (D.B)
[15] AIR 1981 SC 746
[16] (1952) 3 SCR 756
[17] (1964) 4 SCR 921
[18] (1975) 3 SCC 722
[19] 1954 SCR 418

[\[20\]](#) (1974) 4 SCC 573