

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

W.P. No. 3671 of 2017

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

1) This writ petition is filed assailing the order of detention dated 17.10.2016 passed by the 2nd respondent – Collector and District Magistrate, whereby the husband of the petitioner namely Unnam Mohan Rao was ordered to be detained in the Central Prison, Warangal.

2) The learned counsel for the petitioner submits that detention order was passed on 17.10.2016. When the matter was referred to the Advisory Board for review, the Board opined that there is sufficient cause to detain the petitioner's husband. Thereafter, the Government, vide G.O.Rt.No.18, dated 05.01.2017, confirmed the order of detention after considering the report of the Advisory Board and directed that detention of the petitioner's husband be continued for a period of 12 months from the date of detenu's detention i.e. 18.10.2016.

3) The learned counsel further submits that the aforesaid detention order was passed based upon three cases registered against the detenu. The first F.I.R. was registered on 26.09.2016 as Cr.No.186 of 2016 and second F.I.R. was registered on 08.10.2016 as Cr.No.192 of 2016 of Khammam III

Town Police Station for the offences punishable under Sections 420 and 120-B read with 34 IPC and Sections 19 and 21 of the Seeds Act, 1966. In the first case, the detenu was arrested and subsequently released on bail. In the second case, the detenu was arrested on 15.10.2016, but he did not file any bail application and remained in prison. The third F.I.R. was registered on 13.10.2016 as Cr.No.138 of 2016 of Kamepally P.S for the offences punishable under Sections 420 and 120-B IPC and Section 19(a) and 21 of the Seeds Act. All the cases were registered on the similar allegation that the detenu was supplying spurious JCH 801 chilli seeds to the farmers which failed to flower and resulted in loss to the farmers.

4) In the third case also the detenu has not moved any bail application, therefore, there is no imminent danger to the public that the detenu will indulge in similar offences. The learned counsel also submits that as per settled law, when there is imminent danger to the public, in such an event, if bail application is not moved by the detenu, then there is no likelihood of the detenu indulging in any of the crime, therefore, without application of mind, the 2nd respondent passed the detention order on 17.10.2016.

5) In order to strengthen his arguments, the learned counsel for the petitioner has relied upon the judgment of the

Supreme Court reported in the case of *Rekha v. State of Tamil Nadu*¹ wherein the Apex Court observed as under:

“It was held in *Union of India v. Paul Manickam* that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

In our opinion, there is a real possibility of release of a person on bail who is already in custody *provided he has moved a bail application which is pending*. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.”

6) The learned counsel for the petitioner submits that in view of the dictum of the Apex Court in *Rekah's* case as cited supra, the satisfaction of the detaining authority is required with cogent material if there is any likelihood of release from the jail. In the present case, no cogent material is provided by the sponsoring authority and there is likelihood of release from the jail. Thus, the present petition deserves

¹ (2011) 5 Supreme Court Cases 244

to be allowed and consequently the detenu be released from the jail.

7) On the other hand, the learned Assistant Government Pleader appearing on behalf of the learned Advocate General for the respondents submits that there are three cases registered against the detenu and the same are mentioned in the detention order dated 17.10.2016 in the grounds of detention. The *modus operandi* of the detenu and his associates was that he along with his associates conspired and committed the offence of supplying spurious Chilli seeds to the farmers with ulterior motive and cheated with deceitful words and glib talk. Thus, the detenu along with his associates cheated all the farmers, who came in contact with him, and caused loss of Rs.40,000/- to Rs.50,000/- to the farmers. Making use of the ignorance of illiterate farmers, the detenu and his associates sold the spurious seeds knowingly and intentionally with a view to cheat and cause financial loss to them, thereby, the detenu, not only landed the poor farmers in a perennial trap but also cheated them beyond recovery. Consequently, the detenu was arrested on 15.10.2016. It is further submitted that in Cr.No.186 of 2016, the respondents came to know that the petitioner was released on bail. As all the cases are of similar nature, there is every likelihood of release of the detenu on bail and if he is

released on bail he will indulge in similar activities in the remaining cases.

8) The learned counsel for the respondents has relied upon another judgment of the Apex Court reported in the case of D.M. Nagaraja v. Govt. of Karnataka² wherein it is held to the following effect:

“The learned counsel for the appellant very much relied on a recent decision of this Court in *Rekha*. In the above case, against the detention order dated 08.04.2010 imposed on Ramakrishnan under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sum-Grabbers and Video Pirates Act, 1982 on the allegation that he was selling expired drugs after tampering with labels and printing fresh labels showing them as non-expired drugs, his wife filed a habeas corpus petition before the Madras High Court. The said writ petition came to be dismissed on 23.12.2010. Hence, the wife of the detainee therein, approached this Court by way of special leave to appeal.

In the same judgment in *Rekha*, this Court has extracted the detention order and the grounds for detaining him under the Tamil Nadu Act, 1982. The grounds show that there is reference to one incident relating to selling expired drugs and the detaining authority by pointing out that necessary steps are being taken by his relatives to take him out on bail and since in similar cases, bails were granted by the courts after lapse of some time and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public health and order and recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, on the materials placed and after fully satisfying, the detaining authority has passed an order under the Tamil Nadu Act, 1982. In para 7, the Bench has pointed out that in the grounds of

² (2011) 10 Supreme Court Cases 215

detention, no details have been given about the alleged similar cases in which bail was allegedly granted by the Court concerned. The grounds extracted therein also are bereft of any further details. In those circumstances, this Court taking note of various earlier decisions came to the conclusion that normal recourse to ordinary law would be sufficient and there is no need for invocation of the special Act.

In the case on hand, we have already extracted criminality, criminal activities starting from the age of 30 and details relating to eleven cases mentioned in the grounds of detention. It is not in dispute that in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years. He had been acquitted in two cases and four cases are pending against him wherein he was granted bail by the courts. It is the subjective satisfaction of the detaining authority that in spite of his continuous activities causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities. In such circumstances, based on the relevant materials and satisfying itself, namely, that it would not be possible to control his habituality in continuing the criminal activities by resorting to normal procedure, the detaining authority passed an order detaining him under Act 12 of 1985.

In view of enormous materials which are available in the grounds of detention, such habituality has not been cited in the above-referred Rekha, we are satisfied that the said decision is distinguishable on facts with reference to the case on hand and the contention based on the same is liable to be rejected.”

9) The learned Assistant Government Pleader submits that in the present case, if the detenu is released on bail, he will involve in similar activities and will cheat poor illiterate farmers through the same *modus operandi*.

10) We have heard the learned counsel for both the parties and perused the material placed on record.

11) We note that in the detention order dated 17.10.2016, the 2nd respondent had considered the three F.I.Rs. F.I.R. No.186 of 2016 was registered on 26.09.2016 and F.I.R. No.192 of 2016 was registered on 08.10.2016 at Khammam III Town Police Station wherein the detenu is A3. F.I.R No. 138 of 2016 was registered on 13.10.2016 at Kamepally Police Station wherein the detenu is A2. The complete material of those cases was placed before the 2nd respondent, and accordingly, upon scrutiny of those cases, the detaining authority is satisfied that the detenu has been continuing Goonda activities without any interruption.

12) He is also satisfied that his Goonda activities have been clearly affecting the farmers of Khammam and of neighbouring Mandals and their financial well-being. The detenu, intentionally and habitually is contravening the provisions of law indulging in the sale of spurious seeds in Khammam and neighbouring Mandals. His activities establish that recourse of normal legal procedure would involve more time and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities and that his business in spurious seeds is likely to cause danger to the small and marginal farmers and his detention is only with a view to prevent him from acting in any manner prejudicial to maintenance of public order. He was declared Goonda and

detained on 18.10.2016 in pursuance of the detention order dated 17.10.2016.

13) It is not in dispute that the purpose of detention order is to stop the activities of the accused which are prejudicial to the public order. Admittedly, in the present case, in F.I.R. No. 186 of 2016, wherein the detenu is A3, has already been released on bail. It is also an admitted fact that the other cases mentioned above are also on similar facts and registered against similar offences, therefore, if the petitioner, by taking shelter of the earlier bail order, moves an application, the Court will certainly allow the bail application and release him. The 2nd respondent is satisfied on this issue, and thereafter, passed the detention order dated 17.10.2016.

14) In the counter affidavit filed by the 2nd respondent, it is specifically stated that the Agriculture Officer, DNA, Finger Printing and Transgenic Crops, Monitoring Laboratory, Hyderabad has stated in the report that their laboratory received Chilli Leaf samples from 28.09.2016 onwards including the one relating to this case. They have stated in their first report dated 06.10.2016 that they have noticed genetic variability among the leaf samples received by their Laboratory and reported that they have scientifically examined the crop sample and found it was not genetically

pure. Moreover, the Government appointed a State Level Committee under the supervision of Dr.P.Saiaiah, Assistant Professor-cum-Scientist, College of Horticulture to look into the failure of Chilli Crop in three Districts including Khammam District, and the Committee, after conducting field test, recorded observations and submitted its report on 02.10.2016 that the seeds involved in this case are genetically impure and not fulfilling the standards mentioned on the label of the seed packet. Based on the morphological features (leaves, branches, stems and flowers), uniformity was not found. The Committee also reported that the crop in question did not conform to the standards of Chilli variety produced and marketed by the detenu. The detention order was passed with a view to prevent the detenu and his associates from further indulging in such activities, which are prejudicial to the maintenance of public order. Even though it is argued by the learned counsel for the petitioner that the detenu is released in F.I.R. 186 of 2016 and since the other two cases are also of similar nature under the same offences, his chances of release are broad, but in view of the facts recorded above, we find no ground to quash the detention order. Hence, we are of the considered opinion that the detention order is perfectly justified and the same cannot be interfered with.

15) Hence, the writ petition is devoid of merit, and the same is accordingly dismissed. No order as to costs.

16) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

10.04.2017

U.DURGA PRASAD RAO, J

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