

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.NO.21502 OF 2017.

ORAL ORDER (Per the Hon'ble Sri Justice Suresh Kumar Kait)

The 3rd respondent – Inspector of Police submitted proposals along with details of offences committed by the detenu by name Pyla Prakash and with regard to opening of rowdy sheet and suspect sheet against him, to the 2nd respondent – Commissioner of Police, and sought to pass order of detention, by invoking the provisions of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Gabbers Act, 1986 (Act No.1 of 1986), as the detenu is habituated in committing bodily offences, property offences with intent to commit such crimes and habituated in committing murder, attempt to murder, dacoity, criminal intimidation, theft causing breach of peace and public order, affecting normal life of general public. On the said proposals, the 2nd respondent passed the impugned order of preventive detention under Section 3(2) of Act No.1 of 1986 and communicated the grounds of detention dated 7.4.2017 to the detenu. The said preventive detention orders were confirmed by the Government vide G.O.Rt.Nos.845 General Administration (Law and Order) Department dated 17.04.2017 and G.O.Rt.No. 1217 General Administration (Law and Order) Department dated 1.6.2017. Aggrieved by the order of preventive detention, the wife of the detenu filed the present writ petition.

2. The learned counsel for the petitioner mainly contended that the impugned order of detention is contrary to the provisions of Act No.1 of 1986 and passed without considering the material on record in proper

perspective. The learned counsel submits that order under preventive detention under Section 3(2) of the Act can be passed if the activities of the detenu are prejudicial to the maintenance of 'public order' as defined under Section 2(a) of the Act. Referring to unnumbered paragraph No.3 of the detention order, the learned counsel pointed out that the 2nd respondent, who is the detaining authority, has found that the activities of the detenu are creating law and order problem in the area and breach of peace. She submits that law and order problem and breach of peace, does not form 'public order' as defined under Section 2(a) of the Act and such activities have to be dealt with under ordinary law of the land and not by means of preventive detention. The learned counsel submits that the detaining authority though eventually recorded that the activities of the detenu are prejudicial to the maintenance of public order, in the paragraph referred to above in the detention order, he has referred to law and order problem and breach of peace and hence, the detention order cannot be sustained. In support of her contention, the learned counsel relied on the judgment of this court reported in *VASANTHU SUMALATHA v. STATE OF ANDHRA PRADESH*¹.

3. On the other hand, learned Special Government Pleader appearing for the learned Advocate General submits that as per the proposals submitted by the sponsoring authority, the activities of the detenu involve habitual committing of bodily offences and offences against the property and creating a sense of fear, panic and insecurity in the minds of public, which are prejudicial to the maintenance of public order. These activities of the detenu fall under clause (g) of Section 2 of the Act, which defines 'goonda'. Based on the proposals submitted by the sponsoring authority, the detaining authority after recording his

¹ 2016(1) ALT 738 (D.B.)

satisfaction with regard to the activities of the detenu, which are affecting the maintenance of public order and that ordinary laws of the land are not found to be adequate and preventing him from indulging in such activities, by invoking the provisions of the Act, passed the impugned order of detention under Section 3(2) of the Act. With these submissions, he sought to dismiss the writ petition.

4. The allegations against the detenu for seeking him to take into preventive detention are that he has been habitually and continuously engaging himself in grave, violence and gruesome unlawful activities in public places, adversely affecting public order, such as murder, attempt to murder, dacoity, theft etc. By indulging in these activities, he is creating panic in the minds of general public, which is prejudicial to the maintenance of public order.

5. To substantiate the above allegations, the detaining authority has considered the past conduct of the detenu, where he was involved in number of criminal cases since 1996 and also his involvement in recent cases. In the grounds of detention, the detaining authority has referred the recent criminal cases in which the detenu was involved. They are Cr.No.68/2016 under Section 457, 380, 413 IPC of Steel Plant Police Station, Visakhapatnam City, Cr.No.69/2016 under Sections 379, 411 IPC of Steel Plant Police Station, Visakhapatnam City, Cr.No.289/2011 and 330/2011 under Section 379 IPC of Steel Plant Police Station, Cr.No.403/14 under Sections 307, 324, 506, 109 IPC of Gajuwaka Police Station, Visakhapatnam city, Cr.No.752/14 under Sections 302, 120-B, 201 read with Section 149 IPC of Gajuwaka Police Station, Visakhapatnam City, Cr.No.228/14 under Section 379 of IPC of Gajuwaka Police Station, Visakhapatnam City; and Cr.No.663/16 under Section 395 of IPC of

Gajuwaka Police Station, Visakhapatnam City. Considering these circumstances and the material submitted by the sponsoring authority, the detaining authority has found that his activities fall under clause (g) of Section 2 of the Act, as he is indulging in 'goonda' activities repeatedly and committing offences affecting human body, against the property and criminal intimidation, insult and annoyance and these activities are creating a sense of fear, panic and insecurity in the minds of public, which are prejudicial and affecting the maintenance of public order. As the normal laws of land are not deterring him from indulging in such activities, the provisions of Act No.1 of 1986 were invoked for his preventive detention and accordingly impugned order has been passed under Section 3(2) of Act 1 of 1986.

6. With regard to the contention of the learned counsel for the petitioner that the detaining authority in the impugned order has recorded his satisfaction that the activities of the detenu are affecting 'law and order' and 'breach of peace', is concerned, to weigh the said contention, the relevant portion of the order relied on by the learned counsel, is required to be noted as under:

"In view of the recommendations placed before me by the Inspector of Police, Steel Plant Police Station, Visakhapatnam city, it was observed that all the activities of Pyla Prakash @ Chilaka @ Ramigadu are very dangerous to the maintenance of public order apart from disturbing the peace, tranquility, social harmony / order in the society. He is responsible for creating numerous law and order problem in the area and has been resorting to unlawful activities by unleashing terror along with his associates in the form of committing grave offences that have been stated in the material produced by the Inspector of Police. Further, he has become more belligerent by threatening the public repeatedly and there is credible information that he is planning to commit grave offences further also. There is every likelihood for breach of peace and violent agitation in view of his uncontrolled aggressive behavior. Therefore, it is decided to take action against Pyla Prakash @ Chilka @ Ramigadu under the provisions of Andhra Pradesh Prevention of the Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (A.P. Act No.1 of 1986)."

A reading of the above excerpt in the impugned order of detention it could be seen that the detaining authority has categorically found that the activities of the detenu are very dangerous to public order. It is to be noticed here that the detaining authority apart from that, also found that the activities of the detenu are disturbing the peace, tranquility, social harmony/ order in the society and that he is also responsible for creating numerous law and order problems in the area. Based on material on record, the detaining authority also found that the activities of the detenu may lead to breach of peace and violent agitation in view of his uncontrolled aggressive behavior. In view of these findings, the observations with regard to detenu creating law and order problem and breach of peace, cannot be read in isolation.

7. In the judgment relied on by the learned counsel for the petitioner, the detaining authority was facing law and order problem of the detenu therein and he also apprehended public peace and law and order, which cannot form grounds for detaining a citizen in preventive custody under Act 1 of 1986. Considering these circumstances and relying on the judgment of the Apex Court in *RAM MANOHAR LOHIA v. THE STATE OF BIHAR*², this court held that to deal with law and order problem, the detaining authority can invoke the ordinary law of the land and not by means of preventive detention and that his powers are limited to take action to maintain public order. He could not control the law and order problems in the District by taking recourse to provisions of preventive detention. The relevant portion of the judgment is as under:

“69. In *Ram Manohar Lohia* (30 supra) the Supreme Court held that the action of the District Magistrate was entirely his own; he was, no

² AIR 1966 SC 740

doubt, facing a law and order problem, but he could deal with such a problem through the ordinary law of the land, and not by means of preventive detention; his powers were limited to taking action to maintain public order; he could not run the law and order problems in his District by taking recourse to the provisions for detention under the preventive detention laws; if he though in terms of “public order”, he should have said so in the order or explained how the error arose; he did neither; and if the needs of public order demanded action a proper order should have been passed.

71. The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to “public peace” and “law and order” neither of which are grounds for detaining a citizen in preventive custody, under A.P. Act 1 of 1986....”

8. Coming to the facts on hand, at the cost of repetition, the detaining authority has categorically recorded his satisfaction that the activities of the detenu are prejudicial to public order and in exercise of jurisdiction under Section 3(2) of the Act, passed the impugned order. The judgment of this court referred to above, cannot be made applicable to the facts of the present case.

9. In view of the above facts and circumstances, we find no illegality or perversity in the impugned order of detention.

10. Finding no merit in the writ petition, the same is accordingly dismissed.

11. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

T. AMARNATH GOUD, J

DATE: 27—12—2017
avs