

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

Writ Petition No.34391 of 2016

ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

Petitioner, in this Writ Petition filed under Article 226 of the Constitution of India, seeks to issue Writ of Habeas Corpus directing the respondents to produce detenu—Venumbakam Sudarshan @ Sudarshan Reddy @ Srinivasulu @ Sudarshanam lodged in Central Prison, Kadapa and further direct him to be released declaring his detention vide C1/513/M/2016 dated 02.08.2016 passed by the 2nd respondent and confirmed in G.O.Rt.No.2009 General Administration(L&O) Department dated 22.09.2016 passed by the 1st respondent as illegal, arbitrary, unconstitutional and void.

2) The facts in brief are thus:

a) Upon sponsored by Superintendent of Police, Kadapa—4th respondent, the Collector and District Magistrate, Kadapa—2nd respondent passed detention order vide C1/513/M/2016 dated 02.08.2016 against the detenu under Section 3(1) and (2) r/w Section 2(a) and 2(b) of A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short Act 1/1986) on the ground that he was causing gross loot of national wealth and he was habituated to wilful destruction of pristine Red Sanders Forest and was a source of

potential danger to public health and his activities are prejudicial to the maintenance of the public order under Act 1/1986. The detention order was passed basing on 8 crimes registered against the detenu under A.P. Forest Act, 1967 and Red Sandalwood Transit Rules, 1969, under the provisions of Biological Diversity Act and under Sections 307 and 379 IPC etc. offences.

b) The detention order was approved by the Government on 09.08.2016 and was referred to Advisory Board which submitted its report on 24.08.2016 to the State of Andhra Pradesh represented by its Chief Secretary, GA (L&O) Department—1st respondent and the 1st respondent confirmed the order of detention vide G.O.Rt.No.2009 GA (L&O) Department dated 22.09.2016 for a period of 12 months from the date of detention.

c) The detenu is thus now in Central Prison, Kadapa. Challenging the detention order the present writ petition is filed by the petitioner who is wife of the detenu.

d) The 2nd respondent filed the counter and opposed the writ petition.

3) Heard arguments of Sri S.Dhushyanth Reddy, learned counsel for petitioner and learned Advocate General (AP).

4a) Severely remonstrating the detention order as mechanical and bereft of valid grounds, learned counsel for petitioner would firstly argue that the detention authority relied upon 8 crimes of which the last incident in Cr.No.134 of 2015 in which the detenu was involved, took

place on 17.08.2015. The sponsoring authority sponsored its proposal on 11.10.2015 and 12.02.2016, however, the detention authority has passed its order only on 02.08.2016. In that view, he would argue, there was an inordinate delay of about 10 months in passing the detention order from the first date of proposal made by the sponsoring authority. He submitted that there was no explanation from the detention authority for the delay of 10 months in passing the delayed detention order thereby, the detention is vitiated. On this aspect he relied upon the judgment of the Apex Court in *Adishwar Jain vs. Union of India*¹.

b) He further argued that the detention order was a stale one inasmuch, as there was a long gap of one year between the last crime i.e. Cr.No.134 of 2015 and the detention order dated 02.08.2016 and there was no proximity between the two incidents. In view of delay between the last date of crime and the detention order, the detention became illegal. On this aspect, he placed reliance on the following judgments:

1. *Jagan Nath Biswas vs. The State of West Bengal*²

2. *J.Madan Mohan vs. State of A.P.*³

3. *Saeed Zakir Hussain Malik vs. State of Maharashtra*⁴

c) Nextly, he argued that the offences alleged against the detenu were in the nature of committing theft of Red Sanders which is concerning to general law and order problem than affecting the public order. Hence, ordering preventive detention basing on such offences is

¹ (2006) 11 SCC 339

² (1975) 4 SCC 115

³ Unreported judgment in W.P.No.34389 of 2016 dt. 22.03.2017

⁴ (2012) 8 SCC 233

against preventive detention law. He thus prayed to allow the writ petition.

5a) Staunchly opposing the writ petition, learned Advocate General would argue that strictly speaking there was no delay between the date of sponsoring and date of order and similarly, there was no delay between the date of last offence and the date of detention order.

In expatiation, he would submit that the 4th respondent in his sponsoring letter, no doubt, mentioned about 8 crimes last one being Crime No.134 of 2016 dated 17.08.2015. The sponsoring authority submitted its proposal on 11.10.2015 and 12.02.2016 and detention order was passed on 02.08.2016. The sponsoring authority placed voluminous record pertaining to number of cases in which the detenu was involved and in order to arrive at an objective satisfaction, the 2nd respondent who is the District Collector-cum-District Magistrate had gone through the record which took a considerable time as he has to attend various other activities relating to district administration. The delay was not wanton but due to unavoidable circumstances. Further, when the matter was pending for consideration, it came to his knowledge that the detenu was involved in a similar offence in Cr.No.26 of 2016 of Railway Kodur PS dated 25.02.2016 for illegally transporting Red Sander logs and was arrested and lodged in Central Prison, Kadapa. Therefore, that fact was also taken into consideration by the 2nd respondent and the same was incorporated in grounds of detention. Therefore, the delay, if any, was in between 25.02.2016 and 02.08.2016

only as the detenu was further involved in another case. This period of 6 months also can't be treated as delay because, while the matter was pending consideration, the detenu was involved in some more offences in between. Learned Advocate General further argued that before passing the detention order the detenu was involved in two more crimes i.e. Cr.No.61 of 2016 of Obulavaripalli PS and Cr.No.66 of 2016 of Sidhout PS dated 29.06.2016 and 30.06.2016 respectively for similar offences. Though these two crimes were not specifically referred in grounds of detention, still they cannot be ignored for the reason they would show that accused has been habitually indulging in similar crimes. So, on factual point of view, there was no long gap between the date of last offence i.e. Cr.No.66 of 2016 dated 30.06.2016 and the date of detention i.e. 02.08.2016. He would strongly argue that proximity aspect cannot be straight jacketed, but should be viewed depending on the facts of each case. On this aspect he relied upon the following judgments.

1. *Smt. Rekhaben Virendra Kapadia vs. State of Gujarat*⁵

2. *Collector and District Magistrate, W.G.District, Eluru, A.P. vs. Sangala Kondamma*⁶.

He thus summed up that in fact there was no delay between the date of sponsoring and the date of detention order and similarly the date of last offence and the date of detention order.

b) Nextly, he would argue that having regard to gravity of the series of offences committed by the accused which involves illegal

⁵ (1979) 2 SCC 566

⁶ (2005) 3 SCC 666

deforestation, threatening and attempting to kill the Police Officers, it is not a simple law and order problem but adversely affecting the public order and therefore, detention order was fully justified.

6) The points for determination are:

- i) *Whether there was inordinate delay between the date of sponsor and date of detention on one hand and date of last offence committed by detenu and the date of detention order and thereby the detention became illegal?*
- ii) *Whether the crimes in which the detenu was involved and relied upon by the detention authority to pass detention order were only affecting law and order problem or affecting adversely the maintenance of public order?*
- iii) *To what relief?*

7) **POINT No.1:** The jurimetrics of the case would show, the S.P, Kadapa(4th respondent) sponsored for preventive detention of the detenu vide Proceedings No.C13/PD/DSP/2015 dated 11.10.2015 and 12.02.2016 wherein he referred eight(8) crimes, the last one being Crime No.134/2015 dated 17.08.2015. Admittedly the detention order was passed by R.2 on 02.08.2016. As such, apparently there is a delay of 10 months between the first date of sponsoring and the date of detention order and similarly, there was a delay of about one year between the date of last offence and the date of detention order. However, as rightly submitted by learned Advocate General, the case needs a holistic approach in determining the delay aspect.

8) Regarding delay, the submission of R.2 is that the offences alleged against the detenu were relating to his involving in smuggling activities of Red Sanders by illegally felling from the forests and causing a huge loss of national forest wealth and public order and the offences are all habitually committed by the detenu in quick succession and as the sponsoring authority placed voluminous record relating to the aforesaid offences involved by the detenu, he (R.2) had to take reasonable time for perusing the entire voluminous record to come to a subjective satisfaction before declaring the detenu as “goonda” in terms of Act 1/1986. Therefore, he could not pass order immediately though the sponsoring authority made submissions on 11.10.2015 and 12.02.2016. It is the further submission on behalf of R.2 that while the matter was pending consideration, the detenu was involved in a similar offence vide Cr.No.26/2016 of Railway Kodur PS dated 25.02.2016 for illegally transporting the Red Sander logs and he was lodged in Central Prison, Kadapa. This fact was clearly mentioned in the grounds of detention. Not only that, the detenu was involved in two more similar offences vide Cr.No.61 of 2016 of Obulavaripalli PS and Cr.No.66 of 2016 of Sidhout PS dated 29.06.2016. Ofcourse, these two crimes were not referred in the grounds but the involvement of the detenu is not disputed. Thereafter, R.2 passed detention order on 02.08.2016 having taken into consideration the series of similar offences committed by the detenu. Thus it is the submission of the respondents that in fact the date of last offence in which the detenu was involved was 29.06.2016 in Crime

No.66/2016 and as the detention order was passed on 02.08.2016, there was no delay in real terms.

9) We gave our anxious consideration to the above undisputed facts. In fact, in ground No.8 of the writ petition, the petitioner herself mentioned about the detenu involving Crime Nos.61/2016 and 66/2016. These offences and earlier 9 offences in which the detenu was involved were all similar offences relating to illegal felling and transportation of Red Sanders. Therefore, R.2 rightly came to a conclusion that the detenu was a “goonda” in terms of Act 1/1986.

10) Coming to delay, having regard to the magnitude of the series of grave offences of similar nature and the voluminous record said to be produced by R.4 before R.2 for his consideration, the explanation of R.2 for delay that he being the Collector-cum-District Magistrate has to attend various administrative functions besides looking into the present matter, can be accepted. Added to it, when the matter was pending consideration, the detenu was involved in three more similar offences and thereafter R.2 passed the detention order. In the whole exercise, there is no delay much-less wilful delay. As already stated supra, the date of last crime being 29.06.2016 and date of detention order being 02.08.2016, there was no delay since there was proximity between the two dates. Hence, the detention order cannot be branded as a stale one with reference to the date of last offence.

11) In *Smt. Rekhaben Virendra Kapadia*'s case (5 supra), Hon'ble Apex Court referring the earlier decisions, observed thus on the time lag between the commission of offence and detention order:

“Whether the time lag between the commission of offence and the detention is enough to snap the reasonable nexus between the prejudicial activity and the purpose of detention would depend upon the facts of the case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. The question is whether the past activities of the detenu are such that the detaining authority can reasonably come to the conclusion that the detenu is likely to continue in his unlawful activities. It is quite likely that persons who are deeply involved in such activities as smuggling can cause a reasonable apprehension in the minds of the detaining authority that they are likely to continue in their unlawful activities, and if such a conclusion is reached there would be no jurisdiction for the Supreme Court to interfere.”

Thus the Apex Court expounded that the test of proximity depends upon facts peculiar to each case and the proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and order of detention. In the instant case also, between the first date of recommendation and detention order, apparently, there is a gap of one year. However, in between, the detenu committed three similar grave offences establishing himself that he deserve the dubious distinction of a “goonda”. If his subsequent involvement in similar offences is also pragmatically taken into consideration, the argument of delay does not stand to test of reasoning.

Hence the decisions cited on behalf of petitioners which we have thoroughly studied, would not help his cause as they have no relevance to the facts involved in this case. The point is accordingly answered against the petitioner.

12) **POINT No.2:** This point is concerned, Sec.2(a) of the Act 1/1986 defines the meaning of “acting in any manner prejudicial to the maintenance of public order” thus:

“acting in any manner prejudicial to the maintenance of public order” means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

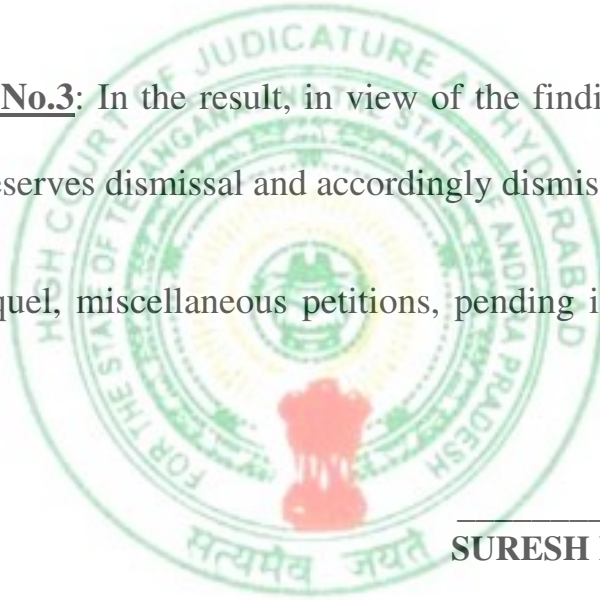
Explanation.—For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave of widespread danger to life or public health"

The activities of bootleggers, dacoits, goondas, immoral traffic offenders and land grabbers can be said to be causing prejudicial to the maintenance of public order if any of the activities of the aforesaid persons directly or indirectly cause or calculate to cause any harm, danger, alarm or a feeling of insecurity among the general public or any section thereof or a grave of widespread danger to life or public health. In that context, when the series of offences in which the detenu was

involved are perused, they are not only the mere theft of Forest property but the way those offences were perpetrated, would cause widespread alarm and feeling of insecurity among the general public and danger to life of not only police but also those who try to question their activities and besides, causing danger to public health in view of adverse impact caused on biological diversity and ecological balance. Hence it is too naive to contend that the offences would only effect law and order but not public order. This point is accordingly answered against the petitioner.

13) **POINT No.3:** In the result, in view of the findings as above, the writ petition deserves dismissal and accordingly dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 30.06.2017
Murthy/scs