

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.2393 of 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner seeks a writ of habeas corpus to forthwith release his son-Rajesh Kumar Sahani, who was lodged in Central Prison, Chanchalguda, Hyderabad, pursuant to the order of detention 10.09.2016 passed by the Commissioner of Police, Hyderabad City, in exercise of power under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for brevity, 'Act of 1986'), by declaring the said order of detention as illegal.

The impugned order of detention was approved by the Government of Telangana, vide G.O.Rt.No.2073 dated 20.09.2016. Thereafter, upon receipt of the report of the Advisory Board, constituted under Section 9 of the Act of 1986, the Government of Telangana confirmed the detention of the petitioner's son for a period of 12 months from the date of his detention, 12.09.2016, vide G.O.Rt.No.2703 dated 08.12.2016.

Smt. Thakur Roopa Singh, learned counsel for the petitioner, would raise two grounds to challenge the detention of the petitioner's son. In the first instance, she would submit that the cases in which the petitioner's son was involved did not impact public order and were cases relating to law and order simpliciter. The second ground of attack is that the petitioner's son is illiterate and he is only familiar with Bihari language, but he was served with documents in English and Hindi languages,

thereby denying him the opportunity of making an effective representation against his detention.

As regards the first ground, the distinction between 'public order' and 'law and order' has been succinctly brought out by the Supreme Court in *Ashok Kumar v. Delhi Administration*¹. The observations in this regard are relevant and are extracted hereunder:

"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. That test is clearly fulfilled in the facts and circumstances of the present case. "

It is therefore not the nature of the act itself which would determine as to whether it falls within the ambit of law and order alone or would have more far reaching consequences, impacting public order. No hard and fast rule can be laid down in this regard and each case would have to be assessed on its individual facts. In the present case, the grounds of detention reflect that the petitioner's son was arrested in Crime No.165 of 2010 on the file of Abid Road Police Station and upon interrogation, his involvement in six more cases came to light. As he had already moved bail petitions and had been granted bail in two cases, the

¹ (1982) 2 SCC 403

Commissioner of Police, being the detaining authority, opined that exercise of power under the Act of 1986 was warranted as the petitioner's son qualified to be categorized a 'Goonda', as defined in Section 2(g) of the Act of 1986.

Trite to state, the subjective satisfaction of the detaining authority cannot be reviewed by this Court except on limited grounds. This Court cannot sit in appeal over such subjective satisfaction or substitute its opinion for that of the detaining authority. That being so, we are of the opinion that no ground is made out to interfere with the opinion expressed by the Commissioner of Police, Hyderabad City, to the effect that the petitioner's son required to be detained under preventive detention laws. It is not for this Court, in exercise of writ jurisdiction, to examine the merits of the criminal cases instituted against the petitioner's son.

As regards the second ground, the acknowledgments signed by the petitioner's son in proof of having received the documents in Hindi and English language, in all 185 papers are produced. It appears that translated copies in Hindi language of all the English documents were so furnished. Though Smt. Thakur Roopa Singh, learned counsel, would state that the petitioner's son only knows Bihari, we are of the opinion that once English documents were furnished along with translations in Hindi, viz., the national language, it was for the petitioner to make arrangements so as to make effective the opportunity given to his son to make a representation against his detention. Even if the petitioner's son is himself not in a position to read and understand the Hindi documents, he can take the assistance of friends and relatives in this regard. Once all the documents were furnished in Hindi language, it cannot be said that he

has been denied the constitutional right to effectively make a representation against his detention. We therefore find no merit in either of the grounds urged by the learned counsel for the petitioner.

The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

8th August, 2017

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