

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

WRIT PETITION No.34389 of 2016

ORDER : (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged the detention order dated 2nd August 2016, passed by respondent No.2, approved by respondent No.1 vide order dated 10th August 2016 and reviewed by the Advisory Board on 24th August 2016. Consequently, confirmation order was passed by the Government vide G.O.Rt.No.2010 on 22.09.2016.

2. We note, while passing the detention order, the 2nd respondent-authority had considered 8 cases mentioned in para 8 of the detention order dated 2nd August 2016. Counsel for the petitioner submits that the last incident i.e. Crime No.102 of 2015 had taken place on 24.08.2015 and detention order was passed on 02.08.2016, hence, there was a gap of about 12 months between the last crime and detention order.

3. In the counter affidavit, respondent No.2 has admitted that the last incident i.e. Crime No.102 of 2015 took place on 24th August 2015 and detention order was passed after a period of about 12 months i.e. on 02.08.2016. It is further stated in the counter affidavit that since the detenu committed offences one after another and obtained bail in all the cases, as there was every possibility of the detenu continuing similar offences. The ordinary penal laws could not deter the detenu and as he did not mend his activities, the impugned order was passed invoking the provisions of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug

Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

4. Heard learned counsel for the parties and considered the material placed on record.

5. It is not in dispute that while passing the detention order dated 2nd August 2016, respondent No.2 had taken into consideration 8 cases registered against the detenu. However, in the case of **Sk.Serajul v. State of West Bengal**¹, the Hon'ble Supreme Court has held as under :

“The order of detention was made on 24th August, 1972 and it was based on the subjective satisfaction of the District Magistrate, Burdwan that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance on supplies and, services essential to the community. This subjective satisfaction, as the grounds on detention furnished to the petitioner show, was founded on three incidents of breaking open railway wagons and looting their contents committee by the petitioner and his associates. One was an incident on 21-11-1971, the other was an incident on 24-11-1971 and the third was an incident on 15-1-1972. Though the last incident occurred on 15th January, 1972, the order of detention was not made until 24th August, 1972, and even after the order of detention was made, the petitioner was not arrested until 22nd February, 1973. There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have

¹ AIR 1975 SC 1517

acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine. But here we find that though an affidavit in reply to the petition was filed by the Deputy Secretary Home (Special) Department, Government of West Bengal no explanation was forthcoming in this affidavit as to why the order of detention was made as late as 24th August, 1972 when the last incident on which it was founded occurred on 15th January, 1972 and why the petitioner was not arrested until 22nd February, 1973, though the order of detention was made on 24th August 1972. Mr.Chatterjee, learned counsel appearing on behalf of the State of West Bengal, contended that the State was not expected to render any explanation in regard to the delay in making the order of detention and arresting the petitioner because no such complaint was made in the petition. But this is hardly an argument which can avail the State when it is called upon to answer a rule issued on a petition for a writ of habeas corpus. It is the obligation of the State or the detaining authority in making its return to the rule in such a case to place all the relevant facts before the Court and if there is any delay in making the order of detention or in arresting the detenu which is prima facie unreasonable, the State must give reasons explaining the delay. Here there is no explanation for the delay which has occurred at both stages and in the absence of such explanation, we are not at all satisfied that the District Magistrate, Burdwan applied his mind and arrived at a real and genuine subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner. The condition precedent for the

making of the order of detention was, therefore, not satisfied, and consequently the order of detention must be quashed and set aside.”

6. The purpose of passing the detention order is to curtail the activities of any person if such activities are disturbing the public order. The activities should be immediate before passing the detention order and such activities cannot be curtailed without passing the detention order.

7. In the present case, out of the 8 cases, in the last case i.e. Crime No.102 of 2015, the offence took place on 24.08.2015 and the detention order was passed on 02.08.2016. Thus, the order is passed nearly after 12 months of commission of the last offence. It is not the case of respondents that they had material to show that the detenu is going to indulge in such activities, which will endanger the public order. Even in the counter affidavit, it is nowhere stated that before passing the detention order, the detenu was found involved in some other crime.

8. Keeping in view the above cited decision and the settled law discussed above, we hereby allow the writ petition and quash further detention of the detenu issued pursuant to impugned detention order dated 02.08.2016, passed by the 2nd respondent in Ref.C1/514/M/2016. Consequently, the Superintendent, Central Prison, Kadapa, YSR Kadapa District is directed to release the detenu forthwith if not required in any other case. Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

22nd March 2017

ajr