

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

WRIT PETITION NO.46321 OF 2016

O R D E R

(Per Sri Justice Sanjay Kumar)

The petitioner is the mother of Syed Jameel Hussain, who was detained in the Central Prison, Chanchalguda, Hyderabad, pursuant to the order of detention dated 08.09.2016 passed by the Commissioner of Police, Hyderabad, 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, 'the Act of 1986'). She seeks a writ of habeas corpus to produce the detenu and to release him forthwith after declaring his detention as illegal and without jurisdiction.

Be it noted that the order of detention dated 08.09.2016 was approved by the Government of Telangana under G.O.Rt.No.2043 dated 17.09.2016. Thereafter, upon considering the report of the Advisory Board, constituted under Section 9 of the Act of 1986, the Government of Telangana confirmed the detention of Syed Jameel Hussain for a period of 12 months from the date of detention, *vide* G.O.Rt.No.2630 dated 02.12.2016.

In the affidavit filed in support of the writ petition, the petitioner stated that her son was taken into custody on 06.06.2016 but the grounds of detention were served on 08.09.2016. She pointed out that the detaining authority had referred to sixteen property cases of snatching and robbery registered against her son that were based on confessions recorded by the police. She claimed that there was no cogent evidence against him and pointed out that he had

been granted bail in all the cases. She further pointed out that no charge-sheet had been laid against her son in any of the cases. She claimed that the police had registered cases against her son without preliminary investigation and without material basis. Pointing out that her son was a student pursuing his graduation, she asserted that his detention was illegal, arbitrary and void. According to her, the mere fact that there were a series of cases registered against him would not be enough to detain him under the provisions of the Act of 1986. She claimed that mere registration of a number of cases would not make her son a habitual offender or a goonda and alleged that the order of detention was passed for political reasons to harass and humiliate the persons belonging to other political parties.

In response, the Commissioner of Police, Hyderabad City, stated in his counter that Syed Jameel Hussain was habitually engaged in unlawful acts since 2015 and was involved in sixteen property offences of snatching/robbery, creating large scale fear and panic, apart from a feeling of insecurity, in the general public, particularly women. He claimed that Syed Jameel Hussain disturbed the peace and tranquility of the area, adversely affecting public order, and was liable to be categorized a 'goonda' within the meaning of Section 2(g) of the Act of 1986. He was stated to be habitually committing grave unlawful activities by snatching gold chains from innocent women folk in broad day light in public places and acting in a manner prejudicial to maintenance of public order. Details were given of the various offences in which the detenu was involved and the Commissioner pointed out that six of such cases were in the recent past, within a span of 4½ months, i.e., from 31.01.2016 to 13.06.2016. He also adverted to the evidence in each case which

linked the detenu to the offence. This evidence took the shape of the stolen properties being recovered at the instance of the detenu either from his residence or from the possession of his associates. The Commissioner justified the passing of the order of detention stating that it was with a view to prevent the detenu from indulging in such offences in future. He further stated that the representation made by the petitioner on 27.09.2016 was examined by the Government and upon due consideration of the entire material on record, the Government opined that there were no valid grounds or reasons to set aside the order of detention, *vide* Government Memo dated 02.12.2016, which was duly communicated to the petitioner and also the detenu. He denied the petitioner's allegation that her son was taken into custody on 06.06.2016 while the grounds of detention were served on 08.09.2016. According to him, the detenu was arrested on 25.06.2016 in relation to Crime No.147 of 2016 on the file of the Asifnagar Police Station and his arrest in the remaining cases was regularized on P.T. warrants. He was released on bail on 12.08.2016 in all the cases and as there was likelihood of his indulging in similar offences, the order of detention was passed on 08.09.2016. The same was served on him on 09.09.2016 and he was detained in the Central Prison at Chanchalguda. This fact was stated to have been intimated to his relations under acknowledgement. The documents relied upon by the detaining authority were served on the detenu on 12.09.2016 in the presence of jail authorities and he acknowledged receipt of the same. The Commissioner further stated that taking note of the antecedent history and conduct of the detenu and upon perusing the material on record, he, being satisfied that there was every likelihood of commission of similar offences adversely

affecting public order, passed the order of detention dated 08.09.2016. Pointing out that the said order of detention was approved thereafter by the Government of Telangana and was also confirmed, extending the period of detention up to 12 months from the date of the detention, he prayed for dismissal of the writ petition.

The petitioner did not deem it necessary to file a reply rebutting the aforestated averments.

Ms.Naseeb Afshan, learned counsel for the petitioner, would contend that the case on hand was not a fit one for applying the provisions of the Act of 1986. She would argue that the offences in which the petitioner's son was involved did not affect public order and being offences relatable to law and order simpliciter, the Commissioner ought not to have exercised power under Section 3 of the Act of 1986. She would further state that mere registration of cases and grant of bail therein did not justify the use of the draconian law of preventive detention against the petitioner's son, an undergraduate. She would further assert that he was implicated in the other offences owing to his arrest in one offence and the remaining cases were foisted upon him. She would argue that the very fact that bail was granted to the petitioner's son in all these cases would demonstrate so and therefore, the order of detention is unsustainable on facts and in law.

On the other hand, the learned Assistant Government Pleader appearing for the learned Advocate General, State of Telangana, would contend that the distinction between 'law and order' and 'public order' is well settled and applying such standards, exercise of power under the Act of 1986 against the petitioner's son was justified. He would further contend that the subjective satisfaction of

the detaining authority under the Act of 1986 is not open to review except on limited grounds, as pointed out by the Courts of law, and argue that no such exceptional circumstances have been made out in the case on hand. He would state that the order of detention is unassailable on facts and in law.

At the outset, it may be noted that there is no allegation of any violation of the prescribed procedure in relation to detention of the petitioner's son. The only ground urged against such detention is that the case on hand was not one falling under 'public order' justifying use of power under the Act of 1986.

The distinction between 'public order' and 'law and order' was brought out in clear terms by the Supreme Court in **ASHOK KUMAR V/s. 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.'

In **KANU BISWAS V/s. STATE OF WEST BENGAL**², the Supreme Court held that the test to be adopted in determining whether an act affects 'law and order' or 'public order' is to see

¹ (1982) 2 SCC 403

² (1972) 3 SCC 831

whether it leads to disturbance of the current of life of the community so as to amount to disturbance of 'public order' or whether it merely affects an individual, leaving the tranquility of society undisturbed.

Further, mere pendency of regular criminal cases would not be a bar for the authorities from taking action or proceeding under the Act of 1986, if warranted.

As pointed out in **HARADHAN SAHA V/s. THE STATE OF WEST BENGAL**³, merely because a detenu is liable to be tried in a criminal Court for the commission of a criminal offence, it would not debar the Government from taking action for his detention under preventive detention laws; secondly, the fact that the police arrested such a person and later on enlarged him on bail and also initiated steps to prosecute him may not bar an order of preventive detention; thirdly, even if such person is actually in jail custody at the time when an order of detention is passed, and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or public order; fourthly, the mere circumstance that a detention order was passed during the pendency of the prosecution would not violate the order; and lastly, the order of detention is a precautionary measure and must be based on reasonable prognosis of the future behaviour of the person concerned based on his past conduct in the light of the surrounding circumstances.

³ (1975) 3 SCC 198

Significantly, the Supreme Court pointed out in ***SUBRAMANIAN V/s. STATE OF TAMIL NADU***⁴ that it is not for the Court to interfere with the subjective satisfaction reached by the detaining authority except on exceptional and extremely limited grounds and the Court must not substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. The Supreme Court further pointed out that sufficiency of grounds is not for the Court to determine as the satisfaction underlying the detention of the person concerned, so as to prevent him from acting in a manner prejudicial to public order, is purely subjective and not objective.

In the light of the aforestated settled legal position, this Court cannot sit in appeal over the subjective satisfaction of the detaining authority that exercise of power under Section 3 of the Act of 1986 was warranted and justified, unless the same is shown to be patently illegal and unsustainable.

In the case on hand, the grounds of detention relied upon six offences involving the petitioner's son, wherein the Commissioner found that the evidence linked him to each offence in question. Though Ms.Naseeb Afshan, learned counsel, would argue that all these cases were foisted upon the petitioner's son, this Court cannot, in exercise of writ jurisdiction, go into the merits of the criminal cases registered against the petitioner's son. On the face of it, the Commissioner of Police, Hyderabad, being the detaining authority, found adequate material to link the petitioner's son to the offences which were the subject matter of these six criminal cases. We therefore find no grounds to interfere with the subjective satisfaction

⁴ (2012) 4 SUPREME COURT CASES 699

of the detaining authority which was the foundation for the order of detention dated 08.09.2016 that stood confirmed thereafter by the Government of Telangana, as required under the Act of 1986. No procedural or substantial violations are made out warranting interference with the same.

The writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

SANJAY KUMAR,J

11th AUGUST, 2017
PGS

Dr.SHAMEEM AKTHER,J

