

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

W.P.No.43671 OF 2016

Between:

Sama Aruna

... Petitioner

and

The State of Telangana rep by Secretary
Home Department, Secretariat, Hyderabad
and another.

... Respondents

JUDGMENT PRONOUNCED ON: 22nd March, 2017.

HON'BLE THE ACTING CHIEF JUSTICE SRI SURESH KUMAR KAIT :

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO :

- 1 Whether Reporters of Local newspapers
may be allowed to see the Judgment? :
- 2 Whether the copies of judgment may be
marked to Law Reports/Journals? :
- 3 Whether Their Lordship wish to see the
fair copy of the Judgment? :

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

WRIT PETITION No. 43671 OF 2016

ORDER:

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

Vide the present petition, the petitioner has challenged the detention order dated 23.11.2016 issued by the second respondent and the same has been confirmed by the first respondent under the provisions of the Telangana Prevention of Dangerous Activities of Boot-Leggers, Decoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act, 1986") and consequently to direct the respondents to release/set free her husband i.e., Sama Sanjeev Reddy.

2. In the affidavit filed in support of the present petition, the petitioner states that her husband Sama Sanjeev Reddy (hereinafter referred to as 'detenu') was falsely implicated in the following offences:

a) Crime No.554 of 2013 of Ibrahimpatnam Police Station for the offences under Sections 447, 427, 506 IPC (arrested on 11.11.2016)

b) Crime No.8 of 2014 of Adibhatla Police Station for the offences under Section 447 and 427 of IPC

c) Crime No.361 of 2016 of Pahadi Sharief Police Station for the offences under Section 363, 384, 420, 120B of IPC and Section 4 of the A.P. Land Grabbing Act and Section 25(1b) of the Arms Act.

d) Crime No.362 of 2016 of Pahadi Sharief Police Station for the same offences as shown above.

e) Crime No.367 of 2016 of Pahadi Sharief Police Station for the same offences as stated above.

f) Crime No.221 of 2016 of Adibhatla Police station for the offences under Sections 419, 420, 468, 363, 452, 323, 342, 386, 506 r/w Section 120B of IPC and Section 25(1) (b) of the Arms Act and Section 4 of the A.P. Land Grabbing Act.

3. The 4 out of 6 cases are concerning to the Gangster Nayeemuddin @ Nayeem. The grounds of detention would disclose that the second respondent has not applied his mind and erroneously invoked the provisions of the Act 1986. It would also disclose that there is no basis for imposing preventive detention on the detenu since the alleged involvement of the detenu is yet to be proved in the criminal Court and that even the allegations in the said crimes do not amount to committing breach of public order.

4. Learned counsel appearing on behalf of the petitioner submits that it is well settled law that imposition of preventive detention is very harsh and unconstitutional, unless there is a brazen conduct, which affects the tempo of public life. The said fact is missing in the present case. Thus, the preventive detention is *ex facie* illegal. Collusion with Gangster Nayeem and involvement in some sale transactions does not warrant imposition of preventive detention. When there are criminal cases for regular offences, preventive detention cannot be resorted to. The grounds of detention are not falling into the arena of public order.

5. Learned counsel further submits that the 4 cases relied upon out of 6 cases mentioned above are all old cases, however the same are registered in the year 2016. The detenu has been detained by the detaining authority on the ground that the detenu

has been involved in the offences of criminal conspiracy, cheating, kidnapping, extortion, criminal trespass and damaging landed property and threatening the owners of lands with dire consequences in order to grab their landed properties etc., Thus, the detenu has repeatedly committed crimes by creating constant fear and panic among the poor and innocent agriculturists in the limits of Adibhatla and Pahadi Sharief Police Station and caused a feeling of insecurity to their agricultural landed properties. Due to which, large sections of people are adversely affected by his unlawful activities. The detenu being the active member in the gang of most dangerous and notorious gangster Nayeemuddin @ Nayeem (who died in an exchange of fire on 08.08.2016 in the limits of shadnagar) has been indulging in unlawful activities of committing offences as noted above, which is prejudicial to the maintenance of public order.

6. Learned counsel further submits that all the offences are related to the year 2013-2014. However, no alleged crime has been committed by the detenu. Therefore, the detaining authority ought not to have come to the conclusion that the detenu is prejudicial to the public order. Thus, the detention order passed by the detaining authority is arbitrary and illegal, which deserves to be quashed.

7. To strengthen his arguments, learned counsel has relied upon a case reported in **Samala Dhana Laxmi v. State of Telangana rep. by its Secretary, Revenue Department and others**¹, whereby the meaning of the words “**maintenance of**

¹ 2016 (3) ALT 519 (D.B)

public order” has been discussed that in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive, is confined to graver episodes not involving cases of “law and order”, which are not disturbances of public tranquility but of *ordre publique*.

The test to be adopted, in determining whether an act affects law and order or public order, is: does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving tranquility of the society undisturbed? Public order embraces more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even of specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the Society to the extent of causing a general disturbance of public tranquility.

It is further held that 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 only, while in another it might affect the public order. Thus, the State is at the centre and society surrounds it. The acts become graver as we journey from the periphery of the largest circle towards the centre. For expounding the phrase “maintenance of public order”, one has to imagine three concentric circles : Law and order represents the largest circle within which is the next circle representing public and the smallest circle represents the security of the State. All cases of disturbances of

public tranquility fall in the largest circle but some of them are outside “public order” for the purpose of the phrase “maintenance of public order”. Every infraction of the law must necessarily affect the order, but an act affecting “law and order” may not necessarily also affect the “public order”. The true test is not the kind, but the potentiality of the act in question.

Stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life.

8. Learned counsel further submits that the cases relied upon by the detaining authority, are if believed, may be the problem of law and order, however, the said cases are not in any sense disturb the public order. Moreover, the detention order is passed on 23.11.2016 and approved by the State of Telangana vide its order dated 01.12.2016, **whereas**, there is no proximity with the date of detention order. All the offences as mentioned in 4 cases are from the year 2007 to 2016. At present, there is no imminent danger to the public order. Therefore, the detention order is arbitrary and illegal, which deserves to be set aside.

9. On the other hand, learned Government Pleader appearing on behalf of the respondents submits that the detenu has committed as many as 4 cases of criminal conspiracy, cheating, kidnapping and extortion in the limits of Pahadi Sharief Police Station and Adibhatla Police Station of Rachakonda Commissionerate. The detention of the detenu is essentially required as his presence creates sense of insecurity in the minds of public and poses threat to maintenance of peace and public

tranquility in the society, which are prejudicial to the maintenance of public order. The detenu is a notorious criminal and one of the gang members of most dangerous and notorious Gangster Nayeem. The detenu is habitual offender and member of notorious gangster Nayeem, indulged in heinous crimes, such as kidnapping, extortion, threatening the innocent people at the point of swords, sickles and fire arms to grab their landed properties. Due to the activities of aforesaid gang, there is feeling of insecurity among the general public and landlords residing in the limits of Rachakonda commisssionerate. Nayeem was the Gangster, and the detenu is one of his members. Their activities have been creating terror in the minds of people as by taking the name of gangster Nayeem, his members have threatening the poor farmers with dire consequences. Their modus operandi was and is to grab the properties of the poor farmers.

10. Learned Government Pleader further submits that there are 174 crimes registered against Nayeem and his associates. One lakh square yards of land apart from agricultural land has been grabbed during the lifetime of Nayeem. His terror in the society was so high that during his lifetime, no complaint was made by any of the victim due to fear that the said gang may destroy their life and properties. Subsequent to his death on 08.08.2016, the complainant came forward, and only thereafter, one after another cases were registered against Nayeem, individually and his associates. Thus, the detenu was the member of the said gang involved in 4 cases noted above which were relied upon while passing the detention order. Thus, the detenu is also dangerous to the public order.

11. Heard the learned counsel appearing on behalf of the petitioner and the learned Government Pleader appearing on behalf of the respondents. Also perused the material available on record.

12. On a perusal of the record, it is established that during the year 2013, the detenu has been involved in cases of criminal trespass, damage and abusing in most filthy language, therefore Crime No.554 of 2013 for the offences punishable under Sections 447, 427 and 506 IPC of Ibrahimpatnam police station, was registered on the ground that the detenu along with five accused criminally trespassed into the agricultural land of Ac 8.01 guntas in Sy No.289 situated at Adibhatla village, Ibrahimpatnam Mandal, and removed crop (tomato crop). Also abused the complainant and others, who were attending their agricultural works and threatened them with dire consequences. Thereafter, from the year 2014 to 2016, he has committed similar offences, which are mentioned in the grounds of detention. During the period 2013-2016, the detenu along with his associates, created fear and panic in the minds of poor farmers that any of the farmers may be targeted and property would be grabbed by using of modus operandi of compelling the farmers to transfer their agricultural lands in favour of the persons of their choice. The detenu and his associates created constant fear and panic among the poor and innocent agriculturists. Thus, the detaining authority declared the detenu as per clause (g) of Section 2 of the Act 1986 as "goonda".

13. Section 2 (g) of the Act, 1986 defines '**Goonda**' as follows:

'**goonda**' means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

14. The detenu being the active member of most dangerous and notorious gangster Nayeemuddin @ Nayeem has been indulging in unlawful activities of committing offences of criminal conspiracy, cheating, kidnapping, extortion and land grabbing, criminal trespass, criminal intimidation, threatening with dire consequences and damaging agricultural crops, kadies etc., Thus, the detenu being the member of Nayeem gang, has created fear and panic in the minds of innocent and poor agricultural families, who are eaking out their livelihood by doing agriculture, and thereby, disturbing the public order and tranquility in the area. Thus, their unlawful activities have caused a feeling of insecurity to their properties. The detenu has been persistently indulging in the activities mentioned in the detention order despite the cases being registered on earlier occasions. Thus, it establishes that the detenu is a habitual offender and his activities fall within the ambit of Section 2 (g) of the Act 1986.

15. In a case reported in **Arun Ghosh Versus State of West Bengal**², wherein it was observed that an act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public

² 1970 (1) Supreme Court Cases 98

order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely place. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.

The Hon'ble Supreme Court further observed in the afore cited case while referring **Dr Ram Maohar Lohia v. State of Bihar**³'s case, that how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

³ (1966) 1 SCR 709

In case of **Raj Kumar Singh Versus State of Bihar and others**⁴, the Hon'ble Supreme Court has held that preventive detention for the social protection of community is necessary. Anti-social elements creating havoc have to be taken care of by law. Lawless multitude bring democracy and constitution disrepute. Bad facts bring hard laws. But these should be properly and legally applied. It should be so construed that it does not endanger social defence or the defence of the community, at the same time does not infringe the liberties of the citizen.

16. A person who has been habitually engaging himself in unlawful acts of committing kidnapping, cheating and extortion, which create a sense of insecurity in the minds of public and pose threat to maintenance of peace and public tranquility in the society, such are obviously prejudicial to the maintenance of public order. If such person is not curbed, he will continue to do the same activities.

17. Therefore, keeping in view the involvement of the detenu in various cases and his association with notorious gangster Nayeem, and his indulgence in heinous crimes as mentioned above, causing fear and insecurity among the general public and landlords, the authorities have rightly passed the detention order.

18. The justification for passing the detention order was that out of 4 cases registered against the detenu, he filed bail petitions in 3 cases, and was released on bail. In Crime No.221 of 2016 of Adibhatla police Station, his arrest was regularized by filing PT warrants. There was every likelihood that he might resort

⁴ (1986) 4 Supreme Court Cases 407

to similar offences of Kidnapping, cheating and extortion by threatening innocent people, which affect the public order adversely.

19. In view of the above discussion, we are of the considered opinion that the detaining authority had good grounds to detain the detenu. There are no merits in the instant petition.

20. Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

Date : 22-03-2017
Note : L.R copy be marked
(b/o)
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