

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
WRIT PETITION No. 11340 OF 2017

ORDER: (*Per* Hon'ble Dr. Justice Shameem Akther)

The petitioner is the wife of N. Sridhar Goud, who was detained in Central Prison, Cherlapally, pursuant to the order of detention, *vide* No.19/PD/CCRB/RK/2016 dated 27.12.2016, passed by respondent No.2-Commissioner of Police, Rachakonda, 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'), as approved by respondent No.1-Government of Telangana under G.O.Rt. No.25, General Administration (Law & Order) Department, dated 05.01.2017, and confirmed after receipt of the Advisory Board Report, *vide* G.O.Rt. No.657, General Administration (Law & Order) Department, dated 10.03.2017. The petitioner seeks a writ of *habeas corpus* to release her husband and set him free declaring the detention order as illegal and unconstitutional.

2. Heard Sri K. Surender, the learned counsel for the petitioner, and the learned Assistant Government Pleader for the respondents.

3. The petitioner stated in the affidavit filed in support of the petition that her husband-N. Sridhar Goud was detained

on the ground that he was a 'Goonda' within the meaning of Section 2(g) of the Act of 1986 and his acts were adversely affecting the maintenance of public order and creating feeling of insecurity in the society; the order of detention was passed in a mechanical manner without application of mind on vague, irrelevant and non-existent grounds describing eight incidents alleged to have complained in between 21.01.2016 and 18.08.2016 and the said complaints are based on confessions of co-accused and there was no role played by the detenu in these incidents; the detaining authority committed a mistake by invoking the provisions of preventive detention laws and the detenu was admittedly in judicial custody and as such, there is absolutely no necessity to pass detention order against the detenu; the documents relied upon by the detaining authority for detaining the detenu were not properly supplied to the detenu, in which some of the documents are not legible, some documents are not supplied with pagination and some documents are mixed up with each other thereby the detenu was denied his right to submit effective representation to the competent authorities; and the detaining authority failed to understand that when the laws of the land are sufficient to deal with the situation resorting to invoke preventive detention laws is illegal and unconstitutional.

4. The petitioner filed additional affidavit stating that due to inadvertence, some of the grounds were left over and contended that the detenu submitted a representation dated 16.01.2017 through the Superintendent of Central Prison to, (1)

The Chief Secretary, Government of Telangana, (2) The Advisory Board, Hyderabad, (3) The Commissioner of Police, Rachakonda Commissionerate, Hyderabad, and (4) The District Collector, Hyderabad, the same was rejected on 10.03.2017 after 53 days. The delay of 53 days vitiates the entire order of detention. It is further stated that the detenu was not informed his right to be represented by an advocate, these two grounds also vitiate the order of detention.

5. Respondent No.2-the Commissioner of Police, Rachakonda, filed counter contending that the detenu is a "Goonda" within the definition of Section 2(g) of the Act of 1986, as he has been habitually committing grave and gruesome unlawful activities, such as kidnapping, extortions, murders, attempts to murders, criminal trespass, land grabbing, etc., affecting the public order adversely thereby creating fear and a feeling of insecurity to the lives and properties in the minds of general public; in order to prevent him from further indulging in such unlawful activities, which are prejudicial to the maintenance of the public order, the impugned detention order was passed; the detenu committed as many as eight offences, which are grave and gruesome unlawful activities; in spite of registration of several crimes and arrest, the detenu has been coming out on bail one after the other and habitually committing similar type of offences and as such, it cannot be said that the order of detention is illegal and not passed in accordance with the provisions of the Act of 1986; for the last several years, the

detenu, his associates and their leader-Nayeem committed several serious offences and after death of their leader-Nayeem, many complaints were registered against the detenu and the gang members of slain ganster-Nayeem and the Government constituted a Special Investigation Team (SIT) to enquire into the said complaints; the basis for the detention of the detenu is the satisfaction of the executive for a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same; the object of the law of preventive detention is not punitive but only preventive and the action of the executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority; the detaining authority has narrated all the reasons in the grounds of detention for passing the detention order to prevent him from disturbing public order as the recourse to normal criminal proceedings did not have the desired impact; the action of the respondents in issuing the impugned orders is in accordance with law; and ultimately prayed to dismiss the writ petition.

6. Sri K. Surender, learned counsel for the petitioner, would contend that the detenu was not provided with all the material documents relied upon and he was not explained the contents thereof; also contended that the detenu was not supplied the copies of the confession made by the co-accused; thus, he was denied the constitutional right of effectively making a representation against his detention and that this failure on the

part of the State would vitiate the entire proceedings. In support of his contentions, he relied on the following decisions:

- (1) **Farhana Begum v. State of Telangana and others¹.**
- (2) **Smt. Icchu Devi Choraria v. Union of India and others².**
- (3) **Powanammal v. State of T.N. and another³.**
- (4) **Devalla Chinamma v. State of Andhra Pradesh and others⁴.**
- (5) **Rekha v. State of T Nadu TR Sec to Govt. and another⁵.**

7. In view of the submissions made by both sides, the point for determination is, whether the detention order dated 27.12.2016 is liable to be set aside?

8. In **Farhana Begum's** case (1 supra), this Court relied on a decision of the Hon'ble Supreme Court in *A.C. Razia v. Government of Kerala* [(2004)2 SCC 621], wherein it was observed that the detenu had the right to be informed as soon as may be of the grounds on which the order has been passed and afforded the earliest opportunity of making a representation against the detention to make an effective representation to effectuate the guarantees/safeguards envisaged in the Constitution under Article 22(5), the detenu should be supplied the grounds of detention along with the supporting documents in the language known to the detenu.

¹ 2016(2) ALD (CrI.) 629

² (1980) 4 SCC 531

³ (1999) 2 SCC 413

⁴ 2017(1) ALD (CrI.) 808

⁵ 2011 Law Suit (SC) 362

9. In **Smt. Icchu Devi Choraria's** case (2 supra), the Hon'ble Supreme Court held that the detenu asked for the copies of statements, documents and material relied upon in the grounds of detention as early as 06.06.1980, the detaining authority did not supply copies of such statements, documents and material until 11.07.1980 and on that also, what were supplied were merely copies of statements and documents and not the copies of the tapes, which were supplied only on 11.07.1980; the delay in supplying the copies of documents, statements and tapes was wholly unjustified and the detenu was thus denied the earliest opportunity of making an effective representation and this infected the continued detention of the detenu with the voice of illegality; and the petition was allowed and directed that the detenu was set at liberty forthwith.

10. In **Powanammal's** case (3 supra), the Hon'ble Supreme Court held that the detention was challenged on the ground that the detenu was denied the right to make effective representation as the order of remand to judicial custody relied on in the grounds of detention was passed in this case, the Tamil version of that document was not supplied, even a specific demand for the same was made and the non-supply of Tamil version on demand was fatal to the detention.

11. In **Devalla Chinnamma's** case (4 supra), a Division Bench of this Court held that it is not in dispute that the detenu was in judicial custody in connection with seven criminal cases, though the detaining authority has referred to the fact that the

detenu was in judicial custody in seven criminal cases, he has failed to advert to the aspect as to whether any bail application has been moved by the detenu and there is a likelihood of his release on bail in the near future and, in the absence of recording of the satisfaction of the detaining authority on these aspects, the impugned detention cannot be sustained.

12. In **Rekha's** case (5 supra), the Hon'ble Supreme Court held in paragraph Nos.9 and 10, which read as follows:

"9. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion'. (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande, (supra) – para 63). The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest.

10. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital."

13. Learned Assistant Government Pleader would contend that the detaining authority furnished copies of all the documents, on which reliance is placed. There is no legal requirement that a copy of any document mentioned in the order

shall invariably be supplied to the detenu; what is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him; even if the documents referred in the order are not supplied, which are not relied on by the detaining authority for forming of its opinion or was made the basis for passing an order of detention; and the crux of the matter lies in whether the detenu's right is to make effective representation against the order of detention is hampered by non-supply of the particular document, the detention order is not vitiated. Learned Assistant Government Pleader would also contend that the delay in disposal of the representation is not fatal. In support of his contentions, he relied on the following decisions:

- (1) **D.M. Nagaraja v. Government of Karnataka and others⁶.**
- (2) **State of Tamil Nadu and another v. Abdullah Kadher Batcha and another⁷.**
- (3) **J. Abdul Hakeem v. State of T.N. and others⁸.**
- (4) **G. Reddeiah v. Government of Andhra Pradesh and another⁹.**
- (5) **Senthamilselvi v. State of T.N. and another¹⁰.**
- (6) **E. Subbulakshmi v. Secretary to Government and others¹¹.**
- (7) **Collector and District Magistrate, W.G. District, Eluru, A.P. and others v. Sangala Kondamma¹².**

⁶ (2011) 10 SCC 215

⁷ (2009) 1 SCC 333

⁸ (2005) 7 SCC 70

⁹ (2012) 2 SCC 389

¹⁰ (2006) 5 SCC 676

¹¹ 2016 SCC Online SC 1313

¹² (2005) 3 SCC 666

(8) Mst. L.M.S. Ummu Saleema v. Shri B.B. Gujaral and another¹³.

14. In **D.M.Nagaraja's** case (6 supra), the Supreme Court held in paragraph No.23 as under:

"This Court in *K.M. Abdulla Kunhi v. Union of India* [(1991) 1 SCC 476] has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and as such, the contention raised by the appellant as if there was delay in consideration, is baseless and liable to be rejected. As pointed out above, the counsel for the appellant did not raise any objection as regards to the same."

15. In **Abdullah Kadher Batcha's** case (7 supra), it was held by the Supreme Court as under:

"The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (*sic* not) been supplied, they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of

¹³ (1981) 2 SCC 317

making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced."

16. In **J. Abdul Hakeem's** case (8 supra), the Supreme Court held as follows:

"The principle of supply of the material documents to the detenu was considered by this Court in the matter of *Radhakrishnan Prabhakaran v. State of T.No.* [(2000)9 SCC 170]. In para 8, this Court has said

"We make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him."

17. It is clear from the above decisions that the detenu has a right to be supplied with the copies of material documents on which reliance is placed by the detaining authority for passing the detention order, the document although referred to in the order is not supplied, which is not relied upon by the detaining authority for forming of its opinion or was made the basis for passing the order of detention, the order of detention would not vitiate. The crux of the matter lies in whether the detenu's right to

make a representation against the order of detention is hampered by non-supply of the particular document.

18. Learned Assistant Government Pleader relying on the decisions in **Abdullah Kadher Batcha** and **J. Abdul Hakeem** cases (7 and 8 supra), would contend that non-supply of documents in any way is not prejudicial to the detenu. Merely because copies of some of the documents have (*sic* not) been supplied, they cannot by any stretch of imagination be called as relied upon documents. The detenu has not given the details of those documents in the instant case. Further, the detaining authority based its satisfaction on the confessions made in seven criminal cases. So, the non-supply of copies of confessional statements of co-accused is not fatal.

19. In **G. Reddeiah's** case (9 supra), the Supreme Court held as under:

"In a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the detaining authority is subjectively satisfied about the various offences labeled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass an appropriate order under Section 3 of the 1986 Act by fulfilling the conditions stated therein."

20. In **Senthamilselvi's** case (10 supra), the Supreme Court held as follows:

"There is also no substance in the plea that the confessional statement of the co-accused was relied upon, but the copy thereof was not supplied. The grounds of detention merely refer to the confession by the co-accused. That does not form foundation for the detention. On the other hand, it appears that the detenu himself made a confession and that was the main factor on which the order of detention was founded. There is distinction between a relied-upon document and a document which has been referred to without being relied upon."

21. In **E.Subbulakshmi's** case (11 supra), the Supreme Court observed that no grievance had been made about an illegible copy being supplied by the detenu to any authority. No representation was made by the detenu to any authority in this regard so as to assert that the said document was relied upon and furnishing of an illegible copy thereof to him was fatal. The argument which was advanced before the Court in this regard was therefore rejected.

22. In **Sangala Kondamma's** case (12 supra), the Supreme Court held that where it is necessary for the authority proposing the detention of a person under the Act of 1986 to produce such material which shows the continuous previous illegal activities of the proposed detenu which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while

other acts must be proximate to each other. Thus, if the facts placed before the detaining authority are proximate to each other and the last of the facts mentioned is proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside.

23. In **Ummu Saleema's** case (13 supra), the Supreme Court held that though an order of detention may not state in express words that the detaining authority had also considered the question whether prosecution under ordinary criminal law would not meet the situation and be sufficient to prevent the detenu from engaging in objectionable activities, a reading of the entire counter-affidavit made it clear that it was the opinion of the detaining authority that, prosecution or no prosecution, the only effective way of preventing the detenu from engaging in objectionable activities was to detain him. Acting upon the counter-affidavit averments, the order of detention was upheld.

24. Relying on the decisions in **Farhana Begum, Smt. Icchu Devi Choraria** and **Powanammal** cases (1, 2 and 3 supra), learned counsel for the petitioner would contend that though the detention order was passed on 27.12.2016, all copies of documents relied on by the detaining authority were not supplied to the detenu, there is a delay in supplying the copies, therefore the detenu could not make an effective representation to the authority concerned and, on this ground, the detention order is liable to be vitiated. It is also contended that some of the copies of documents are illegible and there is no proper

pagination. In the instant case, the receipt dated 28.12.2016 given by the detenu reveals that the detenu received the copies of documents, which are in Telugu and English. The order of detention was also read over to the detenu in the presence of the Jailer concerned. The detenu could not establish that some of the copies of documents are illegible and some of the copies of documents are not supplied to the detenu. The details of those documents are not given. As per the counter-affidavit filed on behalf of the detaining authority, all the copies of documents were supplied to the detenu. To vitiate the order of detention, the detenu has to establish that the copies of material documents, on which the detaining authority relied, are not supplied to him, as held by the Hon'ble Supreme Court in **Abdullah Kadher Batcha's** case (7 supra). No such details are given at any point of time. The detention order was passed on 27.12.2016 and copies of documents were supplied on 28.12.2016. There is no delay. The contentions raised on behalf of the detenu do not merit consideration.

25. Relying on the decisions in **Devalla Chinnamma** and **Rekha** cases (4 and 5 supra), the learned counsel for the petitioner would contend that to prevent misuse/abuse of the subject act, the provisions under the Act of 1986 are required to be complied strictly and meticulously, all the procedural safeguards, however technical, are mandatory and vital in nature, non-application of mind and giving effective effect in the provisions of the Act of 1986 would vitiate the order of detention.

26. In the instant case, the detaining authority held in the order of detention that the detenu along with other accused committed the aforesaid offences with the notorious members of Gangster-Nayeemuddin alias Nayeem, who died in an encounter on 08.08.2016. The offences indulged are heinous, kidnapping, trespassing into the lands, extortion at gunpoint and the settlement of land disputes. The acts of the detenu cause insecurity and large number of people were adversely affected by his unlawful activities. The criminal record of the detenu clearly establishes that he was a habitual offender and all his activities do fall within the ambit of Section 2(g) of the Act of 1986 to term as 'Goonda'. The present penal laws would not prevent the detenu from indulging such activities. The detenu is persistently indulging in those activities despite the cases being registered on earlier occasions. Therefore, it is imperative to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. The normal law may not be effective and deterrent in preventing the detenu. The order of detention was passed on 27.12.2016 relying on the eight criminal cases. The detaining authority categorically stated in the detention order that the accused has filed bail petitions before the Court and obtained bail in Crime No.639 of 2016 of Vanasthalipuram Police Station for the offences under Sections 120(B), 384 I.P.C. and Sections 25(1-B)(a) and 27 of the Arms Act. Therefore, it cannot be said that there is no application of mind with regard to the detenu seeking bail in all criminal cases.

Confessional statements of the detenu were recorded in all the seven criminal cases.

27. In **D.M. Nagaraja's** case (6 supra), the Hon'ble Supreme Court held that there is no constitutional requirement to consider the representation before confirming the order of detention. As per the record, the representation dated 16.01.2017 of the detenu was rejected on 10.03.2017. As there is no constitutional time limit to dispose of the representation, the order of detention cannot be vitiated.

28. As held in **G. Reddeiah's** case (9 supra), in the matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the detaining authority is subjectively satisfied about the commission various offences labeled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass an appropriate order under the Act of 1986.

29. In **Senthamilselvi's** case (10 supra), the Hon'ble Supreme Court held that the grounds of detention merely referred to the confession made by the co-accused. That does not form foundation for the detention.

30. In the instant case, the detenu had confessed the commission of offences in seven criminal cases. The detaining authority had reached satisfaction to pass the order of detention

relying on the confession made by the detenu in seven criminal cases and other case records. In the detention order, nowhere it is stated that the detaining authority passed the order of detention relying on the confession made by the co-accused. It is evident from the record that the detenu along with other accused habitually, continuously committing offences punishable under the Indian Penal Code and other laws and his activities are prejudicial effect on the society as a whole, as well as public order. When the detaining authority had not formed its opinion basing on the confession of the co-accused, the non-supply of copies of confession statements made by the co-accused is not fatal and on this ground, the impugned order cannot be set aside.

31. As held in **Harpreet Kaur's** case (15 supra), the objectionable activities of the detenu have to be judged in totality of circumstances to find out whether those activities have any prejudicial effect on society as a whole or not and if the society, and not only an individual, suffers on account of the questionable activities of al person, then those activities are prejudicial to the maintenance of public order. So, in the instant case, the accusation in eight criminal cases relied on by the detaining authority, would show that the activities of the detenu are prejudicial to the maintenance of the public order. Basing on those cases, the detaining authority passed the impugned order.

32. As held in **Arvind Shergill's** case (16 supra), this Court cannot sit in appeal over an order of preventive detention

as such an order is largely based on suspicion and the Court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist, warranting restraint on a person.

33. In view of the circumstances stated supra, it can be safely concluded that the detenu was granted bail in a criminal case in Crime No.639 of 2016 of Vanasthalipuram Police Station for the offences under Sections 120(B), 384 I.P.C. and Sections 25(1-B)(a) and 27 of the Arms Act. The detaining authority was fully appraised of these facts and opined thereafter that preventive detention of the detenu was required so as to prevent him from acting in a manner prejudicial to maintenance of public order. There are no grounds to hold that the order of detention is illegal for want of application of mind. The facts and circumstances in the instant case are distinct from the facts and circumstances relied by the learned counsel for the petitioner. The decisions cited by the learned Government Pleader have application to the case on hand. All contentions raised on behalf of the petitioner do fail. Having considered the entire material placed on record, the detaining authority formed the subjective satisfaction that the detention of N.Sridhar Goud was warranted and accordingly exercised power under Section 3(2) of the Act of 1986. We find no illegality in such exercise warranting interference. Therefore, the order of detention is liable to be confirmed.

34. In the result, the writ petition is dismissed. As a sequel, miscellaneous petitions, if any pending in this petition, shall also stand dismissed. There shall be no order as to costs.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date:13-10-2017
siva

