

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

**WRIT PETITION NO.7173 OF 2017**

**O R D E R**

*(Per Sri Justice Sanjay Kumar)*

The petitioner seeks a writ of habeas corpus declaring the order dated 07.12.2016 passed by the Collector and District Magistrate, Nalgonda District, detaining his brother, Vanguri Rakhi @ Rakesh, under the provisions 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 illegal and to consequently direct his release.

This order of detention was approved by the Government of Telangana *vide* G.O.Rt.No.2738 dated 17.12.2016 and was thereafter confirmed by it *vide* G.O.Rt.No.557 dated 25.02.2017, for a period of twelve months, with effect from 12.12.2016.

The case of the petitioner is as under:

His brother, the detenu, was a student and was active in various student and nationalist organizations. He was subjected to preventive detention under the impugned order dated 07.12.2016 citing ten criminal cases filed against him and alleging that he was involved in rioting, criminal intimidation, attempt to murder, outraging religious feelings of other communities and promoting communal hatred. According to the petitioner, the detenu was arrested in relation to these cases and remanded to judicial custody but was later released on bail. Further, he was acquitted in five out of the ten cases and one case ended in compromise. The petitioner pointed out that out of the four cases still pending, three had been

taken as grounds for detention. He referred to the three cases individually –

(1) Crime No.118 of 2015 on the file of Nalgonda I Town Police Station under Sections 295A and Section 504 IPC,

(2) Crime No.51 of 2016 on the file of Nalgonda Rural Police Station under Sections 147, 307, 427, 452, 153A IPC read with Section 149 IPC and Section 7(A) of Criminal Amendment Act, and

(3) Crime No.263 of 2016 on the file of Nalgonda I Town Police Station under Section 307 IPC read with Section 34 IPC.

In all the three cases, the detenu already secured bail, charge-sheets were filed and the cases are pending trial.

The petitioner alleged that the District Collector, Nalgonda, had mechanically passed the detention order without satisfying himself as to whether this was a fit case to exercise power under the Act of 1986. He asserted that such power could not be pressed into service merely because several cases had been registered against a person and so long as ordinary criminal laws were adequate to deal with such cases. He asserted that the detenu had never indulged in any criminal activity with the intention of causing harm, danger, alarm or feeling of insecurity amongst members of the general public or cause widespread danger to life or public health and, therefore, his alleged activities would not come under the purview of 'public order'. He asserted that the Government of Telangana mechanically approved the detention order passed by the District Collector, Nalgonda, and thereafter confirmed it, without application of mind. He stated that the detenu was not convicted by any Court of law for any criminal offence, whereby he could be categorized a 'goonda'. He asserted that the definition of 'goonda' under Section 2(g) of the Act of 1986 had no application to the detenu. He contended that subjecting the detenu to preventive detention without adhering to the procedure of free and

fair trial did not fit in the Constitutional scheme and therefore, interference by this Court was warranted.

In his counter-affidavit, the District Collector, Nalgonda, stated as follows:

As per the detailed report submitted by the Superintendent of Police, Nalgonda, and the records, the detenu was habitually engaging in unlawful activities by leading gangs and committing gruesome offences like rioting, criminal intimidation, attempt to murder, outraging religious feelings of other communities and promoting communal hatred. These heinous acts were creating panic in the minds of the public at large in Nalgonda I Town and Rural Police Station limits of Nalgonda District. He pointed out that since the year 1996, the detenu had been involved in as many as ten cases under Chapters XVI, XVII and XXII of the Indian Penal Code, 1860. He was also involved in two more cases registered under Sections 151 and 107 CrPC on the file of Nalgonda I Town Police Station. The detenu was therefore a habitual offender and a 'goonda' within the meaning of Section 2(g) of the Act of 1986. He stated that it was therefore necessary to prevent the detenu from continuously indulging in unlawful activities which were prejudicial to maintenance of public order and the impugned order of detention was accordingly passed. He stated that out of the ten cases involving the detenu, three cases were of recent origin, being of the years 2015 and 2016, and were taken as grounds for his preventive detention. He pointed out that in spite of registration of several criminal cases against him, the detenu continued to habitually commit similar types of offences after securing release on bail. He stated that all the mandatory procedures as per the Act of 1986 were strictly followed

and asserted that there was no illegality in the detention order on that score. He referred to the cases already registered against the detenu and stated that he, being the detaining authority, felt that launching of prosecution against him under the ordinary law did not have the desired effect of curbing his illegal activities, which were adversely affecting maintenance of public order. He pointed out that after passing of the detention order by him and its approval by the Government of Telangana, the matter was referred to the Advisory Board, constituted under Section 9 of the Act of 1986, and the order of detention was reviewed by the said Board after hearing the detenu and also his brother, the petitioner herein. It was only thereafter that the Advisory Board made its recommendations to the Government of Telangana, whereupon the order of detention was confirmed by the Government *vide* G.O.Rt.No.557 dated 25.02.2017, for a period of 12 months commencing from the date of detention, i.e., 12.12.2016. Referring to case law, he said that the basis of detention in the present case was his subjective satisfaction that the series of cases instituted against detenu clearly substantiated that he was committing acts prejudicial to the maintenance of public order. He therefore justified the detention order passed by him in exercise of power under Section 3(2) of the Act of 1986.

No reply affidavit was filed by the petitioner rebutting the aforestated counter-affidavit averments.

Heard Sri N.Ashwani Kumar, learned counsel for the petitioner, and the learned Government Pleader for Home for the respondents.

Though a ground was raised in the pleadings by the petitioner to the effect that the period of detention could not have been in excess of three months under Section 3(2) of the Act of 1986, that

issue stands settled by the decision of the Supreme Court in **MRS.T.DEVAKI V/s. STATE OF TAMIL NADU**<sup>1</sup>, wherein it was clarified that the period mentioned in Section 3(2) of the Act of 1986 refers to the period of delegation and has no relevance to the period of detention. The issue need not trouble this Court further.

Sri N.Ashwani Kumar, learned counsel, would contend that the detenu was allegedly involved in criminal offences which relate to 'law and order' only and did not impact 'public order'. He would argue that the detenu was not liable to be categorized as a 'goonda' on the basis of his involvement in such cases and, all the more so, as he was acquitted in five of them while one ended in a compromise.

*Per contra*, learned Government Pleader would submit that an order of detention under the Act of 1986 is based on the subjective satisfaction of the detaining authority that such preventive detention is warranted and necessary so as to maintain public order and mere acquittal of a detenu under ordinary criminal laws would not curb exercise of power by the detaining authority under the Act of 1986.

Having considered the rival submissions, the material on record and the relevant case law, this Court is of the opinion that no grounds are made out to interfere with the order of detention in the case on hand. Be it noted that in **PUSHPADEVI M.JATIA V/s. M.L.WADHAWAN, ADDITIONAL SECRETARY TO GOVERNMENT**<sup>2</sup>, the Supreme Court pointed out that sufficiency of the grounds of detention is for the detaining authority and not for the Court and unless perusal of the grounds reflects no material on which the detaining authority could have acted, interference is not warranted.

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<sup>1</sup> (1990) 2 SCC 456

<sup>2</sup> (1987) 3 SCC 367

Again, in **SUBRAMANIAN V/s. STATE OF TAMIL NADU**<sup>3</sup>, the Supreme Court pointed out 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 should 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.

Section 2(g) of the Act of 1986 defines a 'goonda' to mean a person who either by himself or as a member/leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapters XVI, XVII or XXII of the Indian Penal Code, 1860. It is not in dispute that the criminal cases lodged against the detenu in the present case relate to offences falling under the chapters mentioned in the aforestated definition.

In the light of the decisions of the Supreme Court in **MAKHAN SINGH TARSIKKA V/s. THE STATE OF PUNJAB**<sup>4</sup>, **ABDUL AZIZ V/s. THE DISTT. MAGISTRATE, BARDWAN**<sup>5</sup>, **SADHU ROY V/s. THE STATE OF WEST BENGAL**<sup>6</sup>, **AYYA ALIAS AYUB V/s. STATE OF U.P.**<sup>7</sup> and **MUKESH TIKAJI BORA V/s. UNION OF INDIA**<sup>8</sup>, acquittal of the person proposed to be detained under ordinary criminal laws would not bar or curtail exercise of power under preventive detention

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<sup>3</sup> (2012) 4 SUPREME COURT CASES 699

<sup>4</sup> AIR 1964 SC 1120

<sup>5</sup> (1973) 1 SCC 301 = AIR 1973 SC 770

<sup>6</sup> (1975) 1 SCC 660 = AIR 1975 SC 919

<sup>7</sup> (1989) 1 SCC 374 = AIR 1989 SC 364

<sup>8</sup> (2007) 9 SCC 28

laws. Therefore, given the fact that the detenu was allegedly involved in as many as ten cases, the inference drawn by the detaining authority, the District Collector, Nalgonda, that he was habitually committing such offences cannot be said to be without reasonable basis.

It is now fairly well settled that mere pendency of criminal cases would not, by itself, bar exercise of power under the Act of 1986. In **HARADHAN SAHA V/s. THE STATE OF WEST BENGAL**<sup>9</sup>, the Supreme Court pointed out that 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 and the mere circumstance that a detention order was passed during the pendency of the prosecution would not violate the order. Again, in **UNION OF INDIA V/s. PAUL MANICKAM**<sup>10</sup>, the Supreme Court held that if the detaining authority is aware that the detenu is in custody but is reasonably satisfied with cogent material that there is likelihood of his release and seeks to prevent him from indulging in prejudicial activities, it can validly make an order of detention.

The main contention of Sri N.Ashwani Kumar, learned counsel, is that the alleged activities of the detenu, even if taken to be true, would only impact 'law and order' and have no relevance to 'public order'. In this regard, reference may be made to **ASHOK KUMAR V/s. DELHI ADMINISTRATION**<sup>11</sup> wherein, the distinction between 'public order' and 'law and order' was brought out in clear terms by the

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<sup>9</sup> (1975) 3 SCC 198

<sup>10</sup> (2003) 8 SCC 342

<sup>11</sup> (1982) 2 SCC 403

Supreme Court. 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.’

Earlier, in **RAM MANOHAR LOHIA V/s. STATE OF BIHAR**<sup>12</sup>, the Supreme Court observed that contravention of law always affects order but before it can be said to affect ‘public order’, it must affect the community or the public at large. Mere disturbance of law and order leading to disorder, *per* the Supreme Court, may not necessarily be sufficient for action under the Defence of India Act but disturbances which subvert ‘public order’ are.

In **KANU BISWAS V/s. STATE OF WEST BENGAL**<sup>13</sup>, 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 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.

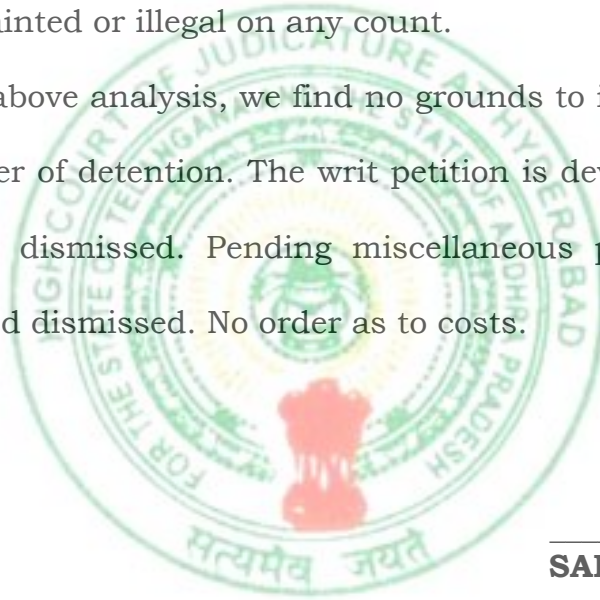
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<sup>12</sup> AIR 1966 SC 740

<sup>13</sup> (1972) 3 SCC 831

It is therefore clear that to bring a particular act into the narrower ambit of 'public order' within the larger circle of 'law and order', the nature of the act by itself would have no relevance. Its impact on the even tenor of life in society would be of relevance. In the case on hand, the detaining authority noted the fact that the alleged activities of the detenu were aimed at hurting the religious feelings of other communities and promoting communal hatred. The same would invariably impact maintenance of 'public order' and cannot be categorized as 'law and order' misdemeanours. The subjective satisfaction of the detaining authority is therefore not shown to be tainted or illegal on any count.

On the above analysis, we find no grounds to interfere with the impugned order of detention. The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



**SANJAY KUMAR,J**

**Dr.SHAMEEM AKTHER,J**

**22<sup>nd</sup> SEPTEMBER, 2017**  
**PGS**