

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

WRIT PETITION No.22073 OF 2017

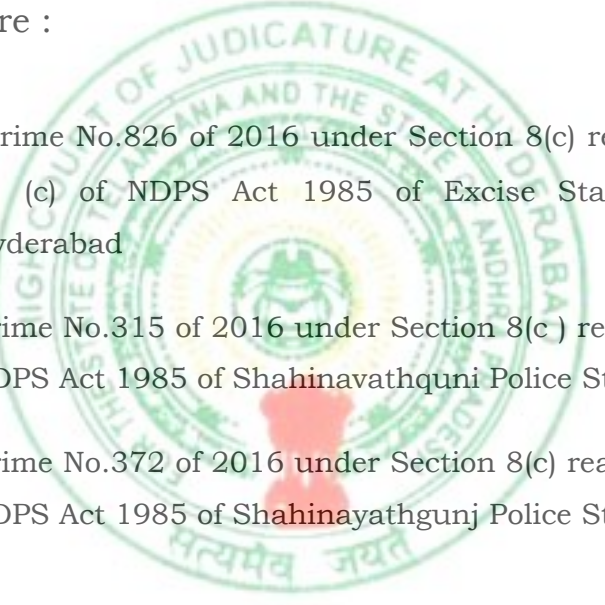
ORDER: (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged the order dated 12.01.2017 passed in S.B.(I) No.606/PD/S-1/2016 and the subsequent order passed by the 2nd respondent where under the detenu is kept under detention w.e.f. 19.04.2017.

2. Learned counsel appearing on behalf of the petitioner argued that, in the grounds of detention, it is specifically mentioned that the detenu was involved in 5 offences viz., 4 offences of peddling of Narcotics Drugs and also one offence of sale of ID liquor in the limits of Hyderabad Police Commissionerate vide (1) Crime No.1328 of 2015 under Section 7(A) read with 8(e) of A.P. Prohibition Act 1995 (2) Crime No.826 of 2016 under Section 8(c) read with 20(b) (ii)(c) of NDPS Act 1985 (3) Crime No.896 of 2016 under Section 8(c) read with 20(b) (ii)(c) of NDPS Act 1985 of Excise Station Dhoolpet, Hyderabad (4) Crime No.315 of 2016 under Section 8(c) read with 20 (b) (ii) (B) of NDPS Act 1985 and (5) Crime No.372 of 2016 under Section 8(c) read with 20 (b) (ii) (B) of NDPS Act 1985 of Shahinayathgunj Police station.

3. It is further stated in the order of detention that as per the material placed before the detaining authority, the detenu has committed offence vide Crime No.1328 of 2015 under Section 7 (A) read with 8(e) of A.P. Prohibition Act 1995 of Excise Station, Dhoolpet, Hyderabad, and the detenu was arrested on 01.10.2015 and thereafter remanded to judicial custody. Apart from the above, the following three cases, which were committed by the detenu would amply prove his activities prejudicial to the maintenance of public order. The three cases are :

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- i) Crime No.826 of 2016 under Section 8(c) read with 20 (b) (ii) (c) of NDPS Act 1985 of Excise Station, Dhoolpet, Hyderabad
 - ii) Crime No.315 of 2016 under Section 8(c) read with 20(b) of NDPS Act 1985 of Shahinavathquni Police Station
 - iii) Crime No.372 of 2016 under Section 8(c) read with 20 (b) of NDPS Act 1985 of Shahinayathgunj Police Station.

4. In addition to above, it is specifically stated that as seen from his past and recent antecedents, there is every likelihood of the detenu indulging in similar prejudicial activities, which are detrimental to the public order, unless he is prevented from doing so by an appropriate order of detention.

5. Learned counsel further submits that the detaining authority has relied on 5 crimes for passing the detention order and the material relied on by the detaining authority in

three (3) crimes were served on the detenu in English language and in Hindi language which is known language of the detenu. The detaining authority in the order and grounds of detention has concluded that the detenu was involved in 5 offences and the said authority satisfied himself from the material placed before him and termed the detenu as Drug Offender under the Telangana Prevention Of Dangerous Activities Of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders And Land-Grabbers Act, 1 of 1986 (for short “the Act”). The detaining authority in the grounds of detention concluded that “as seen from his past and recent antecedents, there is every likelihood of his indulging in similar prejudicial activities, which are detrimental to the public order.”

6. Learned counsel further submits that the crucial material pertaining to the past antecedents i.e., two crimes which also formed basis for passing the detention order was not supplied to the detenu. Thus, the detention order deserves to be set aside.

7. To strengthen her arguments, learned counsel for the petitioner relied upon a case decided by this Court in W.P.No.18131 of 2017 dated 15.11.2017, whereby held as under:

“14. In addition to above, in the grounds of affidavit, it is further mentioned that as seen from the past and recent antecedents, there is every likelihood of the detenu indulging in similar prejudicial activities, which are detrimental to the

public order, unless he is prevented from doing so by appropriate order of detention. It means, the respondent authority has relied upon the past four cases mentioned above in apart to three cases relied upon. But, the documents of four cases, mentioned in para-12 above, are not supplied to the detenu, therefore, he could not make affective representation.

15. Similar issue came before this Court in a case of **Ganta Nagamani Vs State of Telangana, Principal Secretary, Home Department and others in W.P.No.3771 of 2017**, whereby this Court observed as under:

“23. We note in the detention order dated 04.11.2016 which is under challenge the detaining authority while passing the said order has relied upon the two cases as discussed above. However, the sponsoring authority has furnished the details of seven (7) offences registered against the detenu including riotings, attack on police station, damaging the public property, criminal trespass and criminal intimidation. It is specifically stated in the detention order that the detaining authority has relied upon only two cases. The sponsoring authority has to be fair that the material based upon the detention order to be passed has to be supplied to the detaining authority. Simultaneously, the detaining authority has also to take into consideration the cases on which sponsoring authority seeks to pass the detention order. If the detaining authority while passing the detention order or relying upon only two cases, then if the sponsoring authority has furnished the other cases, which are not relied upon, that certainly would pollute the mind of the detaining authority while passing the detention order.”

16. And in case of **Kirit Kumar Chaman Lal Kundaliya Versus Union of India and others**¹, whereby the Supreme Court held that even the documents referred to in the grounds of detention have to be furnished to the detenu.”

8. Learned Government Pleader appearing on behalf of the respondents, in the counter-affidavit, specifically stated that though the detenu has committed five (5) offences during

¹ (1961) 2 Supreme Court Cases 436

2005 to 2016, the detaining authority has relied upon three (3) cases committed by him in the recent past during the year 2016. The earlier cases committed by him prior to 2016 were referred as his antecedents criminal history and conduct. Hence, the cases which are not relied upon by the detaining authority in arriving subjective satisfaction need not be supplied to the detenu. Accordingly, no prejudice is caused to the detenu for making effective representation.

9. We have heard the learned counsel for the parties and perused the record on file.

10. We note, in the grounds of detention, it is specifically stated that the detenu was involved in 5 offences and his illegal activities in peddling Narcotics Drugs have endangered the lives of youth causing irreparable damage to their body parts/organs including Central Nervous system, thereby crippling the mental and physical health of those who are addicted to drugs. Thus, his activities are prejudicial to maintenance of public order and public health at large.

11. From the aforesaid noting, it seems that the detaining authority relied upon 5 aforesaid cases however stated in subsequent para that, apart from above, the facts of following 3 cases which relied upon are prejudicial to the maintenance of public order. Moreover, it is specifically stated that, as seen from the past and recent antecedents, there is every likelihood of detenu indulging in similar prejudicial activities, which are detrimental to the public

order, unless he is prevented from doing so by an appropriate order of detention. Thus, it establishes that the detaining authority has got influenced by the material of his past history provided by the sponsoring authority, however, not provided to the detenu which prevented him in making effective representation.

12. Moreover, the case decided in W.P.No.18131 of 2017 by this Court is on similar facts and issues as are raised in the present petition, therefore the detention order dated 12.01.2017 deserves to be quashed.

13. In view of the above discussion and legal position, the impugned detention order dated 12.01.2017 passed by the 2nd respondent vide SB (I) No.606/ PD/S-1/2016 is hereby quashed.

14. Consequently, the Superintendent, Central Prison, Chanchalguda, Hyderabad is directed to release the detenu i.e, Manoj Singh, forthwith, if not required in any other case.

15. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SURESH KUMAR KAIT,J.

T. AMARNATH GOUD,J.

Date : 27-12-2017
Gvl

