

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

W.P.No.4313 of 2017

ORDER: (Oral)

(Per Honourable Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioner has challenged the detention order dated 30.12.2016 whereby the brother of petitioner was detained and till date he is in jail.

2) Learned counsel appearing on behalf of the petitioner submits that while passing the detention order, the detaining authority—2nd respondent has taken into consideration Crime Nos.905 of 2014-15, dated 02.08.2014; 1674 of 2014-15, dated 12.11.2014; 843 of 2016, dated 24.08.2016 and 963 of 2016, dated 14.12.2016 of Prohibition and Excise Station, Dhoolpet, Hyderabad District and accordingly declared him as Drug Offender as defined in Section 2(f) of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Goonda, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

3) Learned counsel submits that 2nd respondent has given the satisfaction from the material placed before him as mentioned above and thereafter vide order dated 30.12.2016 passed the detention order.

4) Learned counsel has drawn the attention of this Court at page 125 of the paper book filed by the respondent to the detention order dated 28.05.2015 passed in Proceedings No.SB(1) No.285/PD/S-1/2015. Being

aggrieved, on behalf of the detenu, a petition was filed in W.P.No.39088 of 2015 and the same was disposed of vide order dated 07.06.2016 recording that the detention order was passed on 28.05.2015 for a period of one year and the same was confirmed by G.O.Rt.No.2314 dated 21.08.2015. In view of the fact that the period of one year has expired, the impugned order of detention has worked out itself and the cause in the writ petition does not survive for adjudication.

5) Learned counsel submits that in the aforesaid detention order dated 28.05.2015 Case Nos.905 of 2014-15, dated 02.08.2014, 1674 of 2014-15, dated 12.11.2014 were part of detention order and the said period was lapsed after one year. Despite, while passing the present detention order Crime Nos.905/2014-15 and 1674/2014-15 are taken into consideration and the 2nd respondent satisfied from the material placed on record, accordingly, passed the detention order.

6) Similar matter came before this Court in case of Seema Bai w/o Manmohan Singh vs. State of Telangana in W.P.No.29388 of 2016 and the same was allowed by this Court vide order dated 31.01.2017. Consequently, the detention order therein was quashed. In the said case the detenu was declared as Goonda under Section 2(g) of the Act 1/ 1986, whereas in the present the detenu is declared as a drug offender as defined in Section 2(f) of the Act.

7) Learned counsel appearing on behalf of the respondent submits that while passing the detention order four cases were taken into consideration. Out of four cases mentioned in the detention order first

two cases i.e. 905 of 2014-15 and 1674 of 2014-15 have not taken into consideration. The aforementioned cases were referred only to nature the criminal background of the detenu. Therefore, the present detention order was passed basing upon the subsequent two cases registered against the detenu. Therefore, there is no illegality in the detention order and the petition deserves to be dismissed.

8) As per Section 14(2) of Act 1/1986, the revocation or expiry of a detention order shall not bar making of a fresh detention order under Section 3 against the same person. In any case, where fresh facts have arisen after the date of revocation or expiry, on which the Government or an Officer, as the case may be, are/is satisfied that such an order should be made.

9) Admittedly, in the detention order dated 30.12.2016 it is specifically stated as under:

“Whereas, I Rahul Bojja, I.A.S., Collector and District Magistrate, Hyderabad District, satisfied from the material placed before me in Crime No.905/2014-15, dated 02.08.2014; 1674/2014-15 dated 12.11.201; 843 of 2016 dated 24.08.2016 and 963 of 2016 dated 14.12.2016 of Prohibition and Excise Station, Dhoolpet, Hyderabad District, that you Sri Surender Singh s/o Late Amar Singh, aged about 34 years, R/o H.No.13-2-270/A/B, Baba Balakdas Math, Balramgally, Upper Dhoolpet, Hyderabad is a Drug Offender as defined in Section 2(f) of Telangana Prevention of Dangerous Activities, Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers (Amendment) Act, 1986.”

10) On a perusal of the aforesaid order it seems the 2nd respondent has passed the detention order after keeping in view the previous cases based on which detention order dated 28.05.2015 was passed and the same was lapsed after its statutory period. The same is evidence from the order passed in W.P.No.39088 of 2015 on 07.06.2016.

11) In ***Ramesh vs. State of Gujarat and others***¹ the Honourable Supreme Court held as under:

“Para-10. On a careful scrutiny of the grounds of detention, we unreservedly hold that the detaining authority has taken into consideration the two criminal cases mentioned under Sr. Nos. 1 and 2 of the table which were the materials in the earlier order of detention that had been quashed and that it cannot be said that those who cases are mentioned only for a limited purpose of showing the antecedents of the detenu.

Para--11. In view of the above finding, we hold that the ratio laid down in Chhagan Bhagwan Kahar case will squarely apply to the facts of the present case and the impugned order has become liable to be quashed.

12) In Addition to above, in case of ***Chhagan Bahgwan Kahar vs. N.L.Kalna and others***² the Honourable Apex Court has held as under:

“Para—12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite

¹ AIR 1989 SC 1881

² AIR 1989 SC 1234 (1)

subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order.”

13) As per the dictum of the Honourable Supreme Court, when a detention order is quashed by the Court or it is lapsed in due course, the ground of the said order should not be taken into consideration, either as a whole or in part even along with fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order. It is clarified that once the Court strikes down the earlier order or lapsed after the period mentioned in the detention order, it nullifies the previous record and that cannot be taken into consideration while passing fresh detention order.

14) There is no dispute that subsequently two more cases were registered against the detenu and those two cases were sufficient for passing the detention order. However, respondent No.2 has ignored the fact that the first two cases were part of detention order, dated 28.05.2015. The detention of detenu is already over and the said cases would not have been part of the present detention order where on respondent No.2 has given the satisfaction and passed the detention order, dated 30.12.2016. Consequently, the detenu is lying in the jail since then.

15) Keeping in view the facts recorded above and the settled law, the previous record of the detenu cannot be taken into consideration for passing a fresh detention order.

16) Accordingly, the writ petition is allowed. The impugned detention order dated 30.12.2016 passed by the 2nd respondent in Proc.No.C2/PDAC/2/2016 is hereby quashed.

17) Consequently, the Superintendent, Central Prison, Chanchalguda, Hyderabad is directed to release the detenu forthwith, if not required in any other case.

18) No order as to costs.

19) Miscellaneous petitions if any pending shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 28.03.2017
Skmr/Murthy