

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

W.P. No. 37360 of 2016

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

1) This writ petition is filed assailing the order of detention dated 05.05.2016 passed by the 2nd respondent – Commissioner of Police, Hyderabad City, whereby the son of the petitioner namely Syed Mubshir @ Mubashiruddin was ordered to be detained in the Central Prison, Chanchalguda, Hyderabad.

2) In pursuance of the detention order, the detenu was arrested on 06.05.2016.

3) The learned counsel for the petitioner submits that the order of detention dated 05.05.2016 was approved by the State Government on 13.05.2016 and the Advisory Board confirmed the same on 04.06.2016. He submits that in the grounds of detention, the sponsoring authority supplied the material of two cases i.e. Cr.No. 224 of 2015 of Santoshnagar Police Station for the offences punishable under Sections 376(2)(i) and 506 IPC and Sections 3 and 4 of POSCO Act, 2012 and Cr.No.45 of 2016 of Mahankali Police Station for the offence punishable under Section 302 read with 34 IPC and Section 25(1)(a) of Indian Arms Act. In addition to the above, in the grounds of detention, it is specifically stated that the

detenu indulged in the acts of goondaism and cheated the people promising to resolve their health and other problems through black magic, and thus, created terror and fear in the minds of the general public, and disturbed the public order and tranquility in the area.

4) The learned counsel for the petitioner while admitting that the first case was registered for the offences punishable under Sections 376(2)(i) and 506 IPC and Sections 3 and 4 of POSCO Act, 2012 of Santoshnagar Police Station and the second case was registered for the offence punishable under Section 302 read with 34 IPC and Section 25(1)(a) of Indian Arms Act, would however, contend that no case was booked against him for allegedly cheating the people through black magic. However, the sponsoring authority furnished the information that the detenu cheated the people through black magic, and the detaining authority having got influenced with this information, passed the detention order dated 05.05.2016.

5) The learned Assistant Government Pleader representing the learned Advocate General appearing for the respondents, submits that the sponsoring authority while furnishing details of the two cases as noted above, however only made reference of black magic which has not been relied upon, therefore, it is wrong to contend that the detaining

authority has not applied his mind while passing the detention order. He further submits that the detenu and his associates committed rape on a minor girl and put the person under threat with promise. Thus, the detention order is justified.

6) It is settled law that while passing the detention order, duty is cast on the detaining authority to see the material furnished by the sponsoring authority. We note that in the present case, in the grounds of detention, it is clearly mentioned that the detenu had indulged in the act of Goondaism and cheated the people promising to resolve their health and other problems through black magic, and thus, created terror and fear in the minds of the general public. However, we find no material in support of the detenu cheating the people by black magic and no explanation is forthcoming as to why this fact is taken in the grounds of detention. The detention order was passed keeping in view the two cases registered against the detenu and the fact that he cheated the public at large through black magic. The detaining authority passed the detention order dated 05.05.2016 without application of mind. Such an order certainly curtails the personal liberty of the person as stated by the learned counsel for the petitioner which is not disputed. The detenu was acquitted in Crime No. 224 of 2015. It is not an issue whether benefit of doubt was given to the

detenu or he was acquitted on merits. Even though the two cases are sufficient to declare the detenu as Goonda, by virtue of the information furnished by the sponsoring authority to the effect that the detenu was cheating the public promising to resolve their health and other problems through black magic, without any material, the detention order is vitiated.

7) In view of the above recorded facts, we are inclined to quash further detention of the detenu in pursuance of the order dated 05.05.2016.

8) Hence, the detention order dated 05.05.2016 passed by the Commissioner of Police, Hyderabad City, Government of Telangana, is hereby quashed. Consequently, the Superintendent, Central Prison, Cherlapally, Ranga Reddy District is directed to release the detenu – Mr. Syed Mubashir @ Mubashiruddin forthwith if he is not required in any other criminal cases.

9) Accordingly, the writ petition is allowed. No order as to costs.

10) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

12.04.2017

bcj

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J