

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

W.P.No.31313 OF 2016

Between:

Aravind Choudhary

... Petitioner

and

The State of Telangana through its Principal Secretary
Home Department, Secretariat, Hyderabad
and another.

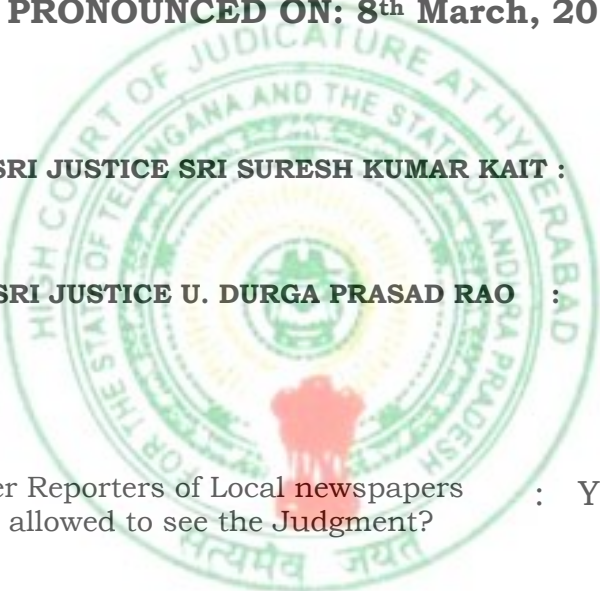
... Respondents

JUDGMENT PRONOUNCED ON: 8th March, 2017.

THE HON'BLE SRI JUSTICE SRI SURESH KUMAR KAIT :

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO :

- 
- 1 Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes/No
 - 2 Whether the copies of judgment may be marked to Law Reports/Journals? : Yes/No
 - 3 Whether Their Lordship wish to see the fair copy of the Judgment? : Yes/No

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
AND
THE HON'BLE SRI JUSTICE U DURGA PRASAD RAO
+ WRIT PETITION No.31313 OF 2016

% 08-03-2017

Aravind Choudhary

... Petitioner

vs.

\$ 1. The State of Telangana through its Principal Secretary
Home Department, Secretariat, Hyderabad
and another.

... Respondents

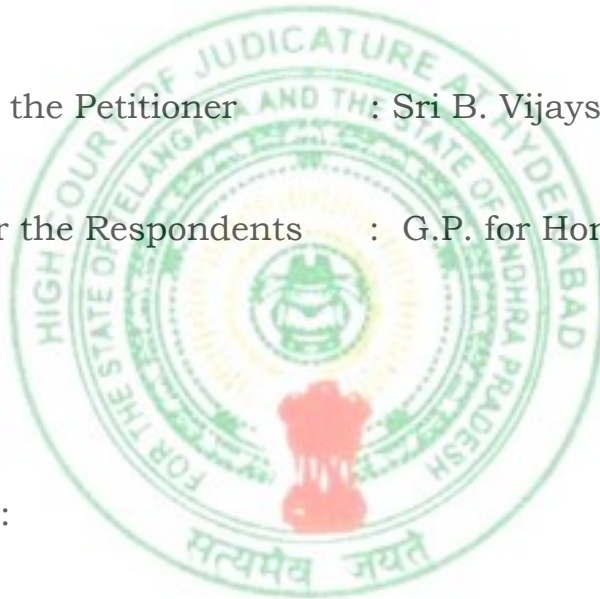
!Counsel for the Petitioner : Sri B. Vijaysen Reddy

^Counsel for the Respondents : G.P. for Home

<Gist :

>Head Note :

- ? Cases referred :
1. (2007) 15 Supreme Court Cases 208
 2. (2015) 12 Supreme Court Cases 127
 3. (1975) 3 SCC 198
 4. (1972) 2 SCC 550
 5. (1973) 4 SCC 76
 6. (1973) 1 SCC 301
 7. (1999) 8 SCC 473
 8. (1974) 4 SCC 573



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

WRIT PETITION No.31313 OF 2016

JUDGMENT: (Oral)

(Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged the order dated 27.08.2016 whereby the detenu has been detained in prison by the second respondent, as being illegal, arbitrary and violative of Articles 21 and 22 of the Constitution of India and consequently the second respondent be directed to release the detenu forthwith.

2. Learned counsel appearing on behalf of the petitioner submits that while passing the detention order, the second respondent has taken into consideration 6 crimes, which are mentioned in detention order dated 27.08.2016 and in the grounds of detention. The detenu was taken into custody on 10.07.2016.

3. He further submits that in first 4 cases, bail has already been granted by the concerned Court. However, the detenu has not furnished the surety. Therefore, there is no likelihood of releasing the detenu from the judicial custody. He further submits that in 5th case i.e., in Crime No.181 of 2016 for the offence punishable under Sections 406, 420 and 506 IPC read with 34 of IPC registered at Ramgopalapeta Police station, Hyderabad, the detenu has moved a bail application, however, till date, no order has been passed in the said application. Moreover, in 6th case i.e., in Crime No.206 of 2016 for the offence punishable under Sections

420 and 406 IPC, registered at Bahadurpura Police Station, Hyderabad, the detenu has not even moved a bail petition. Therefore, there was no imminent possibility of the detenu to come out from the judicial custody. Thus, there was no ground before the second respondent to detain the detenu by passing order dated 27.08.2016.

4. To strengthen his argument, learned counsel for the petitioner has relied upon a decision reported in **Sayed Abulala Versus Union of India and others**¹, whereby the Hon'ble Supreme Court held that *"proper application of mind on the part of the detaining authority must, therefore, be borne out from the order of detention. In cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be some material on record to justify that he may be released on bail having regard to the restriction imposed on the power of the court as it may not arrive at the conclusion that there existed reasonable grounds for believing that he was not guilty of such offence and that the detenu could not indulge in similar activity, if set a liberty."*

It is further held that the detaining authority furthermore is required to bear in mind that there exists a distinction between the "likelihood of his moving an application for bail" and "likelihood to be released on bail". While arriving at his subjective satisfaction that there is likelihood of the detenu being released on bail, recording of the satisfaction on the part of the detaining authority that merely because an application for grant of bail had been filed, would not be enough."

¹ (2007) 15 Supreme Court Cases 208

5. Learned counsel further relied upon a decision of Division Bench of this Court decided in W.P.No.23400 of 2015 dated 21.12.2015, whereby held that *“the inference, of imminent possibility” of the detenu coming out on bail, should be drawn from the material available on record. In the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. Before passing a detention order, in respect of the person, who is in jail, the concerned authority must reach the satisfaction on the basis of cogent material, that there is a real possibility of the detenu being released on bail and further, if released on bail, the material on record reveals that he will indulge in prejudicial activities necessitating his preventive detention.”*

6. Learned counsel further submits that the detaining authority has referred 6 cases, however in 4 cases, the bail order has been passed by the concerned Court, however the detenu has not furnished the surety. Therefore, there is no likelihood of detenu being released. In 6th case i.e., in Crime No.206 of 2016 as noted above, the detenu has not even moved an application, therefore there is no possibility of his being released from the judicial custody.

7. Learned counsel for the petitioner further submits that the detenu is in the business from the last 10 years and he has taken lot of garments in the course of business from the different merchants. Therefore, the activities of the detenu cannot be termed as detrimental to the public order. In the aforesaid cases, there are only six complainants, therefore there is no detriment to the public order.

8. On the other hand, learned Government Pleader appearing on behalf of the respondents submits that the detenu has been indulging in a series of cheating cases in the limits of Hyderabad City Police Commissionerate and also in the limits of different police stations of other States. Hence, he is a “Goonda” as defined in Clause (g) of Section 2 of the Telangana Prevention of Dangerous Activities of Boot-Leggings Decoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

9. Learned Government Pleader further submits, in the detention order, it is specifically mentioned that as the detenu has already moved bail petitions in Crime Nos.160 of 2016, 277 of 2014 and 279 of 2014 registered with Charminar Police Station, in Crime No.36 of 2015 of Central Crime Station, the Detective Department, Hyderabad and in Crime No.181 of 2016 registered with Ramgopalpet police station and bail was granted to the detenu by the concerned Magistrate in first 4 cases mentioned above, there is every likelihood of bail being granted to him in Crime No.181 of 2016 of Ramgopalpet police station also.

10. It is further argued that the detenu may also move a bail petition in Crime No.206 of 2016 of Bhadurpura police station and there is every likelihood of his release from judicial custody soon. On his release, there is likelihood of his being indulging in similar prejudicial activities which are detrimental to public order, unless he is prevented from doing so by appropriate order of detention.

11. Heard learned counsel appearing on behalf of the petitioner and learned Government Pleader appearing on behalf of the respondents.

12. In case of **State of Tamil Nadu through Secretary to Government, Public (Law and Order-F) and another Versus Nabila and another**², the Hon'ble Supreme Court referred the Constitution Bench judgment in **Haradhan Saha v. State of West Bengal**³, wherein held that *the power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution event if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made with or without prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention.*

13. The Hon'ble Supreme Court in the above cited cases has further referred the decision rendered in **Borjahan Gorey v. State of West Bengal**⁴, **Ashim Kumar Ray v. State of West Bengal**⁵, **Abdul Aziz v. District Magistrate, Burdwan**⁶ and **Ahamed Nassar v. State of Tamil Nadu**⁷.

14. In afore cited cases, the Hon'ble Supreme Court has laid down the principles to be followed as to whether detention order is valid or not.

² (2015) 12 Supreme Court Cases 127

³ (1975) 3 SCC 198

⁴ (1972) 2 SCC 550

⁵ (1973) 4 SCC 76

⁶ (1973) 1 SCC 301

⁷ (1999) 8 SCC 473

15. The decision reported in **Biram Chand v. State of U.P.**⁸, which is rendered by Division Bench of the Supreme Court, is contrary to the decisions of three judges. The principles laid down are as *inter alia*, “First, merely because a detenu is liable to be tried in a criminal Court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

16. The detaining authority is duty bound to come to his own satisfaction based on the contents of the bail application keeping in mind the circumstances that there is likelihood of the

⁸ (1974) 4 SCC 573

detenu being released on bail. Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The words “likely to be released” connote chances of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word “likely” shows it can be either way. So without taking any such risk in the facts or circumstances of each case, the type of crime to be dealt with under criminal law, including contents of bail application, each separately and compositely, all would constitute to be relevant material for arriving at any conclusion.

17. In the present case, all 6 cases are registered against detenu for the offences punishable under Sections 406, 420 IPC. Some of the cases as mentioned in the detention order, case under Section 506, 120-B read with 34 IPC is also registered in addition to offences under Section 406 & 420 IPC.

18. It is an admitted case that in first 4 cases, the detenu has already been released on bail, however, deliberately the detenu has not furnished the sureties. If the detenu come forward and furnish sureties, certainly he would be released on bail.

19. In 5th case i.e., in Crime No.181 of 2016, a bail application has been moved by the detenu on 09.08.2016. But we failed to understand as to why order has not been passed by the concerned Court till date. It seems that the detenu has not pursued that application due to the reasons best known to him. The said application may have been dismissed in default or the concerned Court is adjourning the matter at request of the detenu.

20. As the 6th case is concerned i.e., Crime No.206 of 2016, admittedly the detenu has not moved bail application, but the said case is also registered for the offence punishable under Section 406 and 420 IPC. In other 4 cases of a similar nature, the detenu has already been released on bail. Therefore, there is every likelihood of releasing him on bail in 5th & 6th crime also.

21. The detenu and his associates including his wife have hatched criminal conspiracy to cheat the innocent textile business people in Hyderabad and other cities in India, under the guise of textile business, to make easy money and to lead lavish life. As per criminal conspiracy hatched by the detenu and his associates, they approached the textile business people in Hyderabad and other cities misrepresenting that the detenu and his associates are agents for textile business people of Chennai and used to supply textile material on commission basis. On some occasions, the detenu posed as an owner of textile shop in Chennai of Tamil Nadu State. The innocent proprietors of textile shops fell prey to detenu inducement to supply textile material including synthetic and cotton sarees on credit basis. After receiving the material at cheaper rates they absconded and, thereby the detenu and his associates have cheated the textile businessmen to the amounts exceeding of Rs.13 crores.

22. If the detenu is released on bail, there is every likelihood of his indulging in similar prejudicial activities, which are detrimental to public order. The detenu and his associates cheated so many textile businessmen as noted above, due to which there is a fear and panic in the business community at large that they may cheat others. Thus, they disturbed the public order.

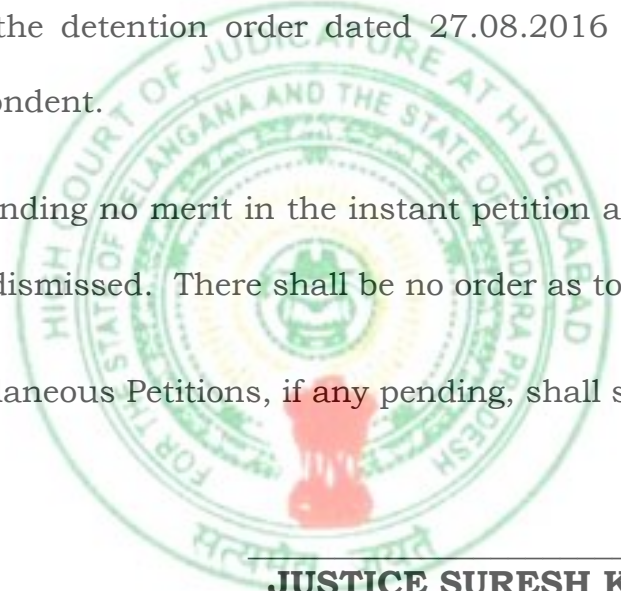
Therefore, keeping their activities into, the detention order dated 27.8.2016 has been passed, so that, the detenu would not be able to indulge in similar activities.

23. We have perused the order and grounds of the detention. We are satisfied that the detaining authority after considering the activities and crimes, registered against the detenu and his associates, has applied its mind and thereafter passed detention order.

24. In view of the above discussion, we find no perversity or illegality in the detention order dated 27.08.2016 passed by the second respondent.

25. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.



JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

Date : 08-03-2017

Note : **L.R.Copy to be marked**

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