

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

WRIT PETITION No.18131 OF 2017

ORDER: (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged the order dated 17.01.2017 and the subsequent order passed thereto by the respondents, whereby the detenu was detained under detention w.e.f. 04.05.2017 for a period of 12 months.

2. The present petition is filed on various grounds. However, the learned counsel for the petitioner has argued on ground (b) of the grounds of affidavit, whereby stated as under:

“b. It is submitted that the detaining authority relied on seven (7) crimes for passing the present detention order and the material relied on by the detaining authority in three crimes was served on the detenu in English language and in Hindi language which is the known language of the detenu. The detenu cannot read and write English language, he pursued his education in Hindi medium, school and he can read and write only Hindi language. It is relevant to state here that the detaining authority in the order and grounds of detention has concluded that the detenu was involved in seven offences and that the said authority satisfied himself from the material placed before him and termed the detenu as Drug Offender under Act 1/86. It is further submitted that the detaining authority in the order and 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”. The crucial material pertaining to the past antecedents i.e, four crimes which also formed basis for passing the present detention order was not supplied to the detenu. The mandatory requirement in law is that all the material which influenced the

mind of the authority for passing the present detention order against the detenu must be supplied to the detenu within 5 days. This mandatory requirement was not complied with. He was deprived of his right to make effective representations to the concerned authorities at the earliest under Art.22(5) Constitution of India. His valuable right was affected. The order of detention is liable to be set aside on this ground.”

3. Learned counsel for the petitioner submits that the detaining authority has relied upon seven (7) crimes for passing the detention order and the material relied upon by the detaining authority in three crimes were served on the detenu in English language and in Hindi language which is known language of the detenu. The detenu has pursued his education in Hindi medium school, therefore, he cannot read and write English language. Thus, he can read and write only Hindi language.

4. Learned counsel further submits that the detaining authority in the order and grounds of detention has stated that the detenu was involved in seven offences and that the said authority satisfied himself from the material placed before him and termed the detenu as the Drug Offender under the provisions of the Telangana Prevention of Dangerous Activities of Boot-Leggars Decoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1 of 1986 (for short “the Act”). The detaining authority in the order and grounds of detention has 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 public order”.

5. Learned counsel further submits that the crucial material pertaining to the past antecedents i.e., four crimes which also formed basis for passing the present detention order was not supplied to the detenu. The mandatory requirement under Section 8 of the Act is that the documents relied upon have to be supplied within 5 days from the date of detention of the detenu. To which, the respondents failed to do so.

6. Learned Government Pleader appearing on behalf of the respondents submits that the respondents while passing the order has mentioned seven cases against the detenu, however, relied upon only on three cases, as mentioned in the order and in the grounds of detention.

7. Learned Government Pleader further submits that the past history can be referred to in the detention order, but those cases are not relied upon by the detaining authority and the documents of the same are not required to be supplied. Therefore, the documents of the four cases, out of seven, have not supplied to the detenu, for the reason that the detaining authority has not relied upon all seven cases, however relied upon only three cases and the documents of the concerned, have been supplied by the detaining authority to the detenu within the statutory period.

8. To strengthen his arguments, the learned Government Pleader has relied upon a case reported in **E.Subbulakshmi Versus State of Tamil Nadu through Secretary to Government and others**¹, wherein it was held in para-10, as under:

“10. Reliance was placed by the learned counsel for the petitioner **on State of T.N. v. Abdullah Kadher Batcha**². In para-7, the Court observed thus (SCC pp.335-36), whereby held as under:

7. The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to who the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (sic not) been supplied they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.”

9. He submits that if the respondents have not supplied the documents of the four cases as mentioned in the detention order as well as in the grounds of detention, those cases have not prevented the detenu by making effective representation to the respondents. If that is the case, then

¹ (2017) 1 Supreme Court Cases 757

² (2009) 1 SCC 333 : (2009) 1 s

not supplying the documents of four cases does not prejudice the right of the detenu.

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

11. We note, in the detention order dated 17th January 2017, it is specifically mentioned that the detenu was involved in seven offences and has developed widespread of Network, wherein he uses cell phone and other Information Technology devices to escape the police observation. In the said order itself, it is further specifically mentioned 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 public order, unless he is prevented from doing so by an appropriate order of detention”.

12. We further note, in para-2 of the grounds of detention, it is stated that detenu was involved in seven (7) cases of peddling of Narcotics Drugs in the limits of Hyderabad Police Commissionerate vide Crime Nos. (1) 236/2005 under Section 8 (c) read with 20 (b)(i) of NDPS Act 1985 of Shahinaythgunj Police Station, (2) 1898/2010-11 under Section 20 (b)(i) of NDPS Act of Prohibition & Excise Station, Dhoolpet, (3) 1900/2010-11 under Section 8 (c) read with 20(b) (ii) of NDPS Act 1985 of Prohibition & Excise Station, Dhoolpet, (4) 188/2011 under Section 8 (c) read with 20 (b) (ii) of NDPS Act of Shahinayathgunj Police Station, (5)

106/2016 under Section 8(c) read with 20(b) (ii) (A) of NDPS Act of CCS, Hyderabad, (6) 166/2016 under Section 8(c) read with 20(b) of NDPS Act 1985 of Mangalhat P.S., and (7) 284/2016 under Section 8(c) read with 20(b) of NDPS Act 1985 of Shahinayathgunj P.S, endangering the health of youth and innocent public at large.

13. Accordingly, it is specifically stated that as per the material placed before the detaining authority the detenu has committed offence vide Crime No.236/2005 in apart to that there are three more cases were referred to in the grounds of detention viz., Crime No.1898/2010-11, Crime No.1900/2010-11 and Crime No.188/2011. The details of all these cases are mentioned in the grounds of detention and specifically stated that as per the material placed before the detaining authority, the detenu has committed offences in the cases mentioned above. Based upon the material, the detaining authority has passed the detention order and thereafter the respondents have passed subsequent orders thereto, whereby the detenu has been detained.

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**³, whereby the Supreme Court held that even the documents referred to in the grounds of detention have to be furnished to the detenu.

³ (1961) 2 Supreme Court Cases 436

17. It is not in dispute that based on the involvement of seven cases of detenu, the detention order has been passed. Moreover, the details of all the seven cases are mentioned in the detention order. In that eventuality, the respondents were duty bound under the law to furnish the documents of all the cases in the known language to the detenu within 5 days from the date of detention. To which, the respondents failed to do so in the present case.

18. In view of the above discussion and legal position, the impugned detention order dated 17.01.2017 passed by the 2nd respondent vide Proceeding No.SB(1)No.1/PD/S-1/2017 is hereby quashed.

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

20. 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.

P. KESHAHA RAO,J.

Date : 15-11-2017
Gvl