

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION NO.16717 OF 2017

O R D E R

(Per Sri Justice Sanjay Kumar)

The petitioner seeks a writ of *habeas corpus* to produce his father, Polimetty Srihari @ Srikanth @ Ayyappa, now detained at Central Prison, Cherlapally, Medchal District, and to release him forthwith, after declaring the order of detention dated 17.01.2017 passed by the Commissioner of Police, Rachakonda, confirmed by the Government of Telangana, *vide* G.O.Rt.No.787 dated 23.03.2017, as illegal.

Pleadings being complete, the matter is taken up for final disposal at the stage of admission.

Heard Smt.B.Mohana Reddy, learned counsel for the petitioner, and the learned Government Pleader for Home, State of Telangana, for the respondents.

The order of preventive detention dated 17.01.2017 passed by the Commissioner of Police, Rachakonda, in exercise of power under Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for brevity, 'the Act of 1986'), was approved by the Government of Telangana, *vide* G.O.Rt.No.205 dated 21.01.2017. Thereafter, upon consideration of the report dated 06.03.2017 submitted by the Advisory Board, constituted under Section 9 of the Act of 1986, the Government of Telangana confirmed the detention of the petitioner's father, the detenu, for a period of 12 months from 17.01.2017, *vide* G.O.Rt.No.787 dated 23.03.2017.

The grounds for detention appended to the order of detention dated 17.01.2017 reflect that the detaining authority took into account eight criminal cases involving the detenu for forming the subjective satisfaction that he needed to be detained in exercise of power under the Act of 1986.

In the affidavit filed in support of the writ petition, it is pointed out that the eight cases relied upon by the detaining authority took place in the years 2003, 2005, 2013 and 2016. The petitioner would therefore contend that irrelevant and stale material was relied upon by the detaining authority while arriving at the subjective satisfaction required under the Act of 1986. Crime No.554 of 2013 related to an incident which took place on 28.09.2013, involving the family members of the complainant and the detenu and his family members. In connection with this crime, the detenu was arrested and remanded to judicial custody on P.T. warrant. Crime No.361 of 2016 related to an alleged offence of the year 2007. The detenu surrendered before the Court and was remanded to judicial custody on 31.08.2016. He was thereafter enlarged on bail on 16.11.2016. Crime No.362 of 2016 also related to the year 2007. The detenu was arrested and was thereafter released on bail on 16.11.2016. Crime No.367 of 2016 related to an incident of the year 2005. The detenu was arrested and released on bail on 16.11.2016. Crime No.221 of 2016 related to the year 2003. The detenu was arrested on P.T. warrant in relation to this case. Crime No.639 of 2016 related to an incident that occurred prior to 08.08.2016. The detenu's arrest in relation to this case was regularized on 16.09.2016. Crime No.348 of 2016 pertained to an incident that occurred on 17.08.2016. The last case in Crime

No.790 of 2003 related to an incident which allegedly took place on 12.10.2003.

Challenge to the order of detention is on the grounds that he cannot be classified as a goonda or land-grabber under of the Act of 1986 as two of the above cases relate to the Arms Act, 1959, and not to the relevant Chapters of the Indian Penal Code, 1860; that Crime No.554 of 2013 only related to 'law and order' as it took place between specific individuals namely, the complainant and his family members, on the one hand, and the detenu and his family members, on the other; that on the date of passing of the detention order, the detenu was in judicial custody in connection with Crime No.221 of 2016 and there were no compelling reasons justifying the detention as he was already in custody; that the crimes alleged to have been committed by the detenu are stale dating back to 2002, 2003, 2005 and 2007, but the actual registration thereof was only in 2016, whereby the detaining authority was influenced by such stale cases in arriving at the conclusion that the detenu's activities were prejudicial to the maintenance of 'public order'.

In his counter affidavit, the Commissioner of Police, Rachakonda, stated as under:

The detenu was habitually engaging in unlawful activities as a member of the gang of slain gangster, Mohd.Nayeemuddin @ Nayeem, who died on 08.08.2016. This gang was stated to have habitually engaged itself in unlawful activities such as kidnapping, extortion, murder, attempt to murder, criminal trespass, land-grabbing etc., in the limits of Pahadishareef, Ibrahimpatnam, Adibatla, Vanasthalipuram and Saroornagar Police Stations of Rachakonda Commissionerate and RGI Airport Police Station of

Cyberabad Commissionerate. Reference was made to the eight criminal cases relied upon in the grounds for detention and it was asserted that the detenu was a goonda and land-grabber within the meaning of the definitions as set out in the Act of 1986. The detention order was passed so as to prevent the detenu from indulging in similar offences, taking note of his past and present criminal history and conduct. All mandatory provisions of the Act of 1986 were strictly adhered to. Dealing with the claim that the cases were stale, it was stated that the continuous activities of the detenu clearly established that his actions were prejudicial to the maintenance of 'public order'. It was pointed out that most of the cases were registered only after the death of the gangster, Nayeem, on 08.08.2016, owing to the terror and wide-spread fear caused amongst the people by the activities of this gang. As the victims did not come forward to lodge complaints till the death of Nayeem, all these cases came to be registered only recently but the question of staleness would not arise, owing to the circumstances. It was pointed out that after the death of the gangster, a series of cases were registered against him and his gang members and a special investigation team was constituted by the Government to enquire into these complaints and submit a report. The investigation by the team had so far revealed that the gangster had amassed huge wealth, by way of settlements, extortions, forcible registrations and kidnaps and had developed properties by using the proceeds of crime. Being the detaining authority, he said that he was satisfied that the unlawful activities of the detenu and his associates were creating terror and disturbing the peace and tranquility in the area and that ordinary law had no deterrent effect in curbing such

unlawful activities. He therefore justified the order of detention and submitted that no grounds were made out warranting interference therewith.

No reply affidavit was filed rebutting the aforestated counter-affidavit averments.

Smt.B.Mohana Reddy, learned counsel, would state that out of the eight crimes relied upon by the detaining authority, six cases pertained to the period 2001 to 2007. She would therefore contend that these stale instances could not form the basis for the subjective satisfaction of the detaining authority under the Act of 1986. She would further point that two of the eight cases related to offences registered under the Arms Act and would not qualify for categorizing the detenu as a goonda or a land-grabber under the Act of 1986. She would point out that Crime No.554 of 2013 related to a dispute between families of the complainant and the detenu and that it did not impact 'public order'. She would further state that the detenu was in custody since 05.09.2016 in relation to Crime No.221 of 2016 on the file of Adibatla Police Station and this aspect was not considered by the detaining authority while passing the order of detention on 17.01.2017.

Opposing these arguments, the learned Government Pleader would contend that this Court must necessarily consider the circumstances of the case in totality, which would clearly bring out the fact that though the incidents took place sometime ago, the complainants came forward only recently to register cases, drawing courage from the fact that the dreaded gangster, Nayeem, had died on 08.08.2016. The so called 'staleness' of these offences would therefore pale into insignificance, as the continuous criminal

activities of the gang, of which the detenu is a member, stood clearly established. He would therefore submit that the detaining authority was fully justified in exercising his power of preventive detention under the Act of 1986. As regards the contention that Crime No.554 of 2014 related to a 'law and order' problem, the learned Government Pleader would point out that another member of the dreaded gang also participated in the incident and assert that it cannot therefore be treated as only a family dispute. Learned Government Pleader would draw the attention of the Court to the substance of each of the eight crimes, which formed the foundation for the detention order, and submit that the activities of the gang instilled fear and terror amongst members of the general public in those areas and it was clearly a case of their activities impacting the maintenance of 'public order'. As regards the last ground urged by the learned counsel for the petitioner, the learned Government Pleader would state that it is well settled that the mere fact that a proposed detenu is already in custody would not bar the detaining authority from exercising power under the Act of 1986. He would therefore justify the order of detention and pray for dismissal of the writ petition.

A plethora of case law was pressed into service by both sides.

In **RAM MANOHAR LOHIA V/s. STATE OF BIHAR**¹, the Supreme Court pointed out that strict compliance with the letter of the rule is the essence of the matter as the statute drastically interfered with the personal liberty of people and the Court was prevented from going behind the face of the order of such detention. It was further pointed out that the State cannot be

¹ AIR 1966 SC 740

heard to say or prove that the order was, in fact, made to prevent acts prejudicial to public order, which would bring it within the rule, though the order does not say so, as allowing that to be done would be to uphold a detention without a proper order.

In ***PUSHKAR MUKHERJEE V/s. STATE OF WEST BENGAL***², the Supreme Court observed that if any of the grounds of detention are found to be irrelevant, satisfaction of the detaining authority on which the order of detention is based would be open to challenge and the detention order would be liable to be quashed.

In ***N.MEERA RANI V/s. GOVERNMENT OF TAMIL NADU***³, the Supreme Court summarized and reiterated the settled principle that subsisting custody of the detenu by itself would not invalidate an order of preventive detention and the decision must depend on the facts of the particular case; preventive detention, being necessary to prevent the detenu from acting in a manner prejudicial to the security of the State or to maintenance of public order etc., it is ordinarily not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities, which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made, even in anticipation, to operate on his release.

² AIR 1970 SC 852

³ AIR 1989 SC 2027

In **KAMLESHKUMAR ISHWARDAS PATEL V/s. UNION OF**

INDIA⁴, the Supreme Court observed that while discharging the constitutional obligation of enforcing fundamental rights and more particularly, the right to personal liberty, the Court could not allow itself to be influenced by the nature of activities of the detenu alone and the minimum safeguards instituted in Article 22 (4) and (5) of the Constitution must be zealously watched and enforced by the Court. The Supreme Court further observed that their rigour could not be modulated on the basis of the nature of activities of a particular person.

In **MUSTAKMIYA JABBARMIYA SHAIKJH V/s. M.M.MEHTA,**

COMMISSIONER OF POLICE⁵, the Supreme Court was dealing with the question as to whether the detenu was a dangerous person habitually committing offences punishable under Chapters XVI or XVII IPC. On facts, the Supreme Court held that a solitary incident would not provide justification to hold the detenu to have habitually committed offences and therefore, he could not be branded a dangerous person.

Lastly, Smt.B.Mohana Reddy, learned counsel, relied upon **SAMA ARUNA V/s. STATE OF TELANGANA**⁶, a case relating to one Sama Sanjeeva Reddy, another of member of Nayeem's gang, who was also subjected to preventive detention under the Act of 1986. The said order of detention was confirmed by this Court, but

⁴(1995) 4 SCC 51

⁵ (1995) 3 SCC 237

⁶ (2017) 6 SCC 327

in appeal, the Supreme Court found that out of the six criminal cases registered against Sama Sanjeeva Reddy - one related to the year 2002-2003, one related to the year 2005, two related to the year 2007, one related to the year 2013 and the last to the year 2014. The order of detention was passed on 23.11.2016. However, the detaining authority did not rely upon the cases of 2013 and 2014 but only considered the four other cases, which dated back nine to fourteen years before the order of detention. As the detaining authority had to arrive at the satisfaction that the detenu needed to be detained in 2016 but the cases relied upon were stale and mildewed, the Supreme Court found exercise of the power of detention based on them to be *malafide* in law. It was observed that the detention order stood vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain the person without a trial. Learned counsel would submit that as the detenu in the present case stands identically situated with Sama Sanjeeva Reddy, the order of detention under challenge also requires to be set aside.

Per contra, the learned Government Pleader relied upon the following case law: In **UMMU SALEEMA V/s. B.B.GUJARAL**⁷, the Supreme Court pointed out that though an order of detention may not state in express words that the detaining authority had also considered the question whether prosecution under ordinary criminal law would not meet the situation and be sufficient to prevent the detenu from engaging in objectionable activities, a reading of the entire counter-affidavit made it clear that it was the opinion of the detaining authority that, prosecution or no

⁷ (1981) 3 SCC 317

prosecution, the only effective way of preventing the detenu from engaging in objectionable activities was to detain him. Acting upon the counter-affidavit averments, the order of detention was upheld.

In ***SURAJ PAL SAHU V/s. STATE OF MAHARASHTRA***⁸, the Supreme Court observed that it must be borne in mind, having regard to the purpose of the preventive detention law, that the detaining authority must take into consideration rational grounds and that should be the basis for the horoscope for the future, so as to determine whether the person proposed to be detained comes within the mischief of such law. It was further observed that if the person is in detention or is under trial and his conviction is unlikely but his conduct comes within the mischief of the Act, then the authority is entitled to take a rational view of the matter.

In ***T.A.ABDUL RAHMAN V/s. STATE OF KERALA***⁹, the Supreme Court pointed out that the question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case, as no hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It was further observed that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention.

⁸ (1986) 4 SCC 378

⁹ AIR 1990 SC 225

In ***HARPREET KAUR (MRS.) HARVINDER SINGH BEDI V/s. STATE OF MAHARASHTRA***¹⁰, the Supreme Court pointed out that objectionable activities of a detenu have to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on society as a whole or not and if the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of 'public order' and not merely prejudicial to the maintenance of 'law and order'.

In ***UNION OF INDIA V/s. ARVIND SHERGILL***¹¹, the Supreme Court pointed out that the Court cannot sit in appeal over an order of preventive detention as such an order is largely based on suspicion and the Court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist, warranting restraint on a person. It was further observed that the Court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view.

In ***COLLECTOR & DISTRICT MAGISTRATE, W.G. DISTRICT, ELURU, A.P. V/s. SANGALA KONDAMMA***,¹² the Supreme Court pointed out that the material produced before the detaining authority should form a chain of events, last of which will have to be proximate to the date of the proposed detention, while the other acts must be proximate to each other and if the acts placed before the detaining authority were proximate to each other and the last of the acts mentioned is proximate to the order

¹⁰ (1992) 2 SCC 177

¹¹ (2000) 7 SCC 601

¹² (2005) 3 SCC 666

of detention, then the early incidents cannot be treated as stale and the detention order would not be liable to be set aside.

In ***BHUPENDRA V/s. STATE OF MAHARASHTRA***¹³, the Supreme Court, while considering the question of live-link, pointed out that it must be noted that the provision empowering detention relates to habitual activities of the detenu and therefore, there may be an instance which may not be of immediate proximity but may indicate that pattern.

In ***G.REDDIEIAH V/s. GOVERNMENT OF ANDHRA PRADESH***¹⁴, the Supreme Court pointed out that so far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order, and once the detaining authority is subjectively satisfied about the various offences labelled against the detenu, habituality in continuing the same, difficult to control him under normal circumstances, he is free to pass an appropriate order under the Act of 1986 by fulfilling the conditions stated therein.

In ***SUBRAMANIAN V/s. STATE OF TAMIL NADU***¹⁵, the Supreme Court was dealing with a situation where the cases relied upon by the detaining authority were attacked on the ground of being stale. The Supreme Court found that the last case related to an occurrence on 18.07.2011 and prior to that, the detenu was involved in two cases in the years 2010 and 2008, and opined that the same clearly showed that the detenu was a habitual offender. The order of detention dated 21.07.2011 was accordingly upheld.

¹³ (2008) 17 SCC 165

¹⁴ (2012) 2 SCC 389

¹⁵ (2012) 4 SCC 699

Dealing with the decision in **SAMA ARUNA**⁶, the learned Government Pleader would point out that the said case is distinguishable on facts, as no proximate incidents were relied upon while passing the order of detention against Sama Sanjeeva Reddy, unlike the case on hand. He would submit that the live-link was not established in the said case and therefore, the order of detention was set aside, but it is not so in the case on hand.

Coming to categorization of the detenu as a 'goonda' and a 'land-grabber' under Sections 2(g) and 2(j) of the Act of 1986, it is no doubt true that the Arms Act, 1959, finds mention in six out of the eight cases relied upon by the detaining authority. However, in five such cases, the provisions of law falling under Chapters XVI and XVII IPC also find mention. It is only in one case that the charge against the detenu was under the Arms Act, 1959, alone. Section 2(g) of the Act of 1986 defines 'goonda' to mean a person, who either by himself or as a member of or a leader of the gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapters XVI or Chapter XVII IPC. Section 2(j) of the Act of 1986 broadly defines a 'land-grabber' to mean a person, who illegally takes possession of any land or indulges in unlawful activities in relation to property. The requirement for being branded a 'goonda' is therefore the habitual commission or attempt to commit offences punishable under the relevant provisions of the IPC while the requirement to qualify as a 'land-grabber' is unlawful activities in connection with others' properties. When seven out of the eight cases alleged habitual commission of offences by the detenu under the relevant Chapters of the Indian Penal Code, 1860, dealing with offences against the

human body or life and property, it is sufficient to infer that he comes within the ambit of the definitions. Merely because the eighth case was also relied upon, it does not dilute or deviate from the finding of the detaining authority that the detenu is liable to be categorized as a goonda and a land-grabber under the Act of 1986.

As regards the contention that stale instances have been relied upon by the detaining authority, it is true that some of the incidents mentioned in the grounds for detention date back to quite a long time ago. However, these cases were also registered in the year 2016 only. Only one out of the eight cases was registered in the year 2003. Another was registered in the year 2013. The remaining cases were registered only in 2016. Further, one of the cases relied upon pertained to an incident of 2013, while one was in relation to an incident as recent as in August, 2016. The explanation for late registration of these crimes is also forthcoming. It was only after the death of the gangster, Nayeem, that the complainants gathered courage and came forward to register cases against the gang. As these cases clearly indicated a pattern (See **BHUPENDRA**¹³) that the members of this gang were habitually committing gruesome offences, terrorising people into submission by intimidation and extortion, they cannot be said to be stale or mildewed. Unlike **SAMA ARUNA**⁶, the cases relied upon by the detaining authority were not all old instances and a clear pattern was brought out by interlinking cases of more recent origin with old ones. Further, as already stated *supra*, the reason for delayed registration of these old cases was also established. Therefore, no inference can be drawn that some age-old illegal activities of gang members are now sought to be pressed into

service, without evidence of such activities having been committed in the more recent past. Further, as rightly pointed out by the learned Government Pleader, even Crime No.554 of 2013 cannot be said to be a dispute between members of the complainant's family and the detenu's family. Involvement of Sama Sanjeeva Reddy is alleged in the commission of this criminal trespass and therefore, it is shown to be another gang related activity. When it is clearly brought out from the pattern that members of this gang were undertaking criminal activities habitually, impacting a large section of the public in those areas, it is established that their activities were prejudicial to the maintenance of 'public order'. Therefore, the question of treating such activities as a mere 'law and order' problem does not arise.

As regards the last ground raised by Smt.B.Mohana Reddy, learned counsel, that the detaining authority did not apply his mind before passing the order of detention, as he did not take into account the fact that the detenu was already in custody, the grounds for detention reflect knowledge of the detaining authority as to in which cases the detenu was granted bail. The detaining authority was therefore well aware that bail had not been granted to the detenu in Crime No.221 of 2016. Specific mention was made by the detaining authority that the arrest of the detenu was regularized in this case on a P.T. warrant.

It is not in dispute that the detenu was granted bail in some of the other cases. As the detaining authority was fully apprised of these facts and opined thereafter that preventive detention of the detenu was required so as to prevent him from acting in a manner prejudicial to maintenance of public order, we find no grounds to

infer that the order of detention is illegal for want of application of mind. Further, we find no grounds to hold that the detaining authority failed to take into account relevant aspects of the matter which were not placed before him or that he failed to apply his mind to material placed before him. Having considered all such material, the detaining authority formed the subjective satisfaction that the detention of Polimetty Srihari @ Srikanth @ Ayyappa was warranted and accordingly exercised power under Section 3(2) of the Act of 1986. We find no illegality in such exercise warranting interference in this writ petition.

Smt.B.Mohana Reddy, learned counsel, would also rely upon Telangana Ordinance No.3 of 2017, whereby the Act of 1986 was amended. She would point out that Section 5-A has now been inserted in the Act of 1986, which states as under:

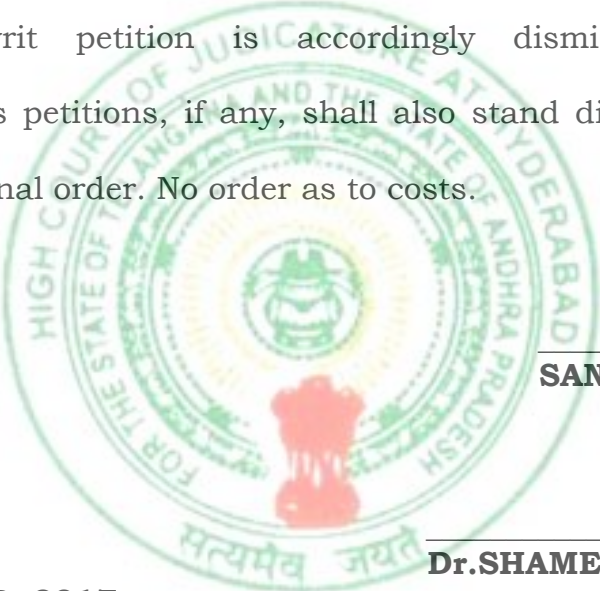
‘5-A: Grounds of detention severable - Where a person has been detained in pursuance of an order of detention under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly - (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are:

- (i) Vague;
- (ii) Non-existent;
- (iii) Not relevant;
- (iv) Not connected or not proximately connected with such person; or
- (v) Invalid for any other reason whatsoever.

and it is not therefore possible to hold that the Government or Officer making such order would have been made the order of detention under Section 3 after being satisfied as provided in the Section with reference to the remaining grounds or grounds.”

Learned counsel would assert that as a distinction between each of the grounds of detention has been brought about only by way of this Ordinance, it is not open to the detaining authority to seek to sustain the impugned order of detention by separating each ground mentioned therein. She would further contend that even if one of the grounds for detention is found to be defective, it would be enough to vitiate the order of detention. However, as we find that none of the grounds for detention cited by the Commissioner of Police, Rachakonda, is liable to be declared illegal, this argument is also of no avail.

The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

6th OCTOBER, 2017

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