

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

W.P.No.39468 of 2016

ORDER : (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged the detention order vide SB(1) No.245/PD/S-1/2016, dated 16.07.2016, which is approved by the State Government vide order dated 23.07.2016 and accepted by the Advisory Board vide order dated 17.08.2016.

2. Learned counsel appearing on behalf of the petitioner submits that based on the Advisory Board order dated 17.08.2016 the State Government has confirmed detention, vide order dated 22.09.2016 with effect from 17.07.2016 for one year.

3. Learned counsel submits that before passing the present detention order, the respondent passed earlier detention order on 11.07.2016 and the same was challenged before this Court and allowed vide order dated 29.12.2015 in W.P.No.37144 of 2015.

4. Learned counsel submits, the settled law is that as per Sub-Section (2) of Section 14 of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Goonda, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act') the revocation or expiry of a detention order shall not be a bar for making

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. However, in the present case as mentioned in the detention order dated 06.07.2016 in para 2, it is clearly mentioned that the detainee was involved in seven cases of peddling Narcotics Drugs and was detained as drug offender under the provisions of the Act vide preventive detention order dated 11.06.2015. Subsequently, he was released from the preventive detention on 01.01.2016 pursuant the order dated 29.12.2015 of this Court passed in W.P.No.37144 of 2015.

5. Learned counsel further submits that out of seven cases, five cases are old one, which were part of detention order dated 11.06.2015 and the same was quashed by this Court vide order dated 29.12.2015. However, in the present detention order, it is clearly mentioned that having regard to recent ingredients, there is every likelihood of indulging in similar prejudicial activities adversely affecting the maintenance of public order and public health at large if he is not prevented by an appropriate order of detention.

6. Learned counsel further submits that while passing the detention order and approved by the Government, the seven cases as mentioned in the detention order were taken into consideration by the detaining authority and the State Government.

7. As per Section 2(f) of the Act drug offender is defined as under:

”drug-offender” means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and Cosmetics Act, 1940 or the Dangerous Drugs Act, 1930 and the rules, notifications and orders made under either Act, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money in above mentioned things by himself or through any other person or who abets in any other manner the doing of any such thing;”

8. In earlier order dated 11.06.2015, there were five cases relied upon and details of the same are mentioned in the grounds of detention and the said cases have already been quashed by this Court. Thereafter, the past cases cannot be relied upon fully or partly.

Learned counsel for the petitioner to strengthen her arguments, relied upon the decision of the Apex Court in **Chhagan Bhagwan Kahar v N.L. Kalna**¹, wherein it was held:

“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 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. In the present case, no doubt, the order of detention contains fresh facts. In addition to that the detaining authority has referred to the earlier detention order and the judgment of the High Court quashing, it presumably for the purpose of showing that the detenu in spite of earlier

¹ AIR 1989 (1) SC 1234

detention order was continuing his bootlegging activities. But what the detaining authority says clearly in paragraph 9 of his affidavit in reply is that he took into consideration the previous grounds of detention also for his conclusion that the detenu 'was engaged in bootlegging activities since long'. In other words the detaining authority has taken into consideration the earlier grounds of detention which grounds had been nullified by the High Court in Special Criminal Application No. 46 of 1987 by issuing a prerogative writ of habeas corpus.

9. Learned counsel for the petitioner submits that the present case is squarely covered by the above cited Judgment keeping in view of the facts and circumstances of the case. In the present case also, in the detention order and the grounds of appeal, the respondents have referred to seven cases in total, however, relied upon two fresh cases as mentioned therein. She further submits that the Supreme Court in **Chhagan Bhagwan Kahar's** case (1st supra) has clarified that the detention authority cannot take into consideration the past cases, either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction while passing a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order. Learned counsel submits, in the present case also the detention order dated 16.07.2016 is liable to be quashed.

10. On the other hand, learned Government Pleader appearing on behalf of the respondents submitted that it is clearly mentioned in the detention order and in the grounds of appeal that the respondents have relied upon only two fresh cases after quashing the earlier detention order dated 11.06.2015 passed by this Court in W.P.No.37144 of 2015

vide order dated 29.12.2015. But for the purpose of reference, the detaining authority has not relied upon the earlier cases. He submits that **Chhagan Bhagwan Kahar's** case (1st supra) relied on by the learned counsel for the petitioner has no bearing in the facts and circumstances of the case. He relied on **Dhananjoy Das vs District Magistrate & Another**², whereby the Apex Court held as follows:

“para 8 Be that as it may, the observations referred to above do not indicate that there can be no preamble or introductory para in the grounds of detention. There is no bar to have introductory paragraphs in the grounds. The observations only mean all allegations of facts which have led to the passing of the order of detention will form part of the grounds of detention. It is, therefore, difficult to accept the contention that there could be no introductory para in the grounds.

Para 14 The grounds of detention read as a whole leave no room for doubt that paragraph 1 of the grounds of detention was only by way of introduction or as a preamble. In substance, it only indicates the modus operandi adopted by the various organisations to the current agitation on foreigners issue in Assam. The 2nd and 3rd paragraphs of the grounds of detention allege a specific part played by the appellant in that agitation. On a perusal of grounds of detention as a whole we are satisfied that the view taken by the High Court that the 1st paragraph of the grounds of detention was only a preamble, prelude, or introductory para is correct. If this be the position then the vagueness in the 1st paragraph cannot be made a ground of attack on the impugned order.

11. He submits that in the citation relied upon by the learned counsel for the petitioner, the detaining authority admitted in the counter affidavit that they had relied upon the previous cases, but however, in the present case, the respondents have not relied on the previous cases, but passed the detention order based on the fresh two

² 1982(2) SCC 521

cases as mentioned in the detention order. He submits that the first crime was registered against the detenu on 19.01.2016 and second case was registered on 01.02.2016, whereas the earlier detention order was quashed vide order dated 29.12.2015 and detenu was released on 29.03.2015. Thus, the aforesaid cases were registered against the detenu and the detaining authority has relied upon the said cases only.

12. We heard learned counsel for the petitioner and learned Government Pleader for the respondents. Perused the material papers placed on record.

13. It is not in dispute that earlier detention order dated 11.06.2015 was passed based on five cases against the detenu and the same was quashed by this Court vide order dated 29.12.2015. It is also not in dispute that in the detention order and grounds of detention, the respondents have mentioned the history of the detenu. However, it is specifically mentioned that they had relied upon only two fresh cases registered after quashing the first detention order dated 11.06.2015.

14. We note that in the detention order dated 16.07.2016 in second para itself, it is mentioned that the detenu was involved in several cases of peddling Narcotic Drugs and was detained as drug offender under the Act. It is also mentioned that subsequently, this Court has quashed the said order and the detenu was released. However, in the same order, it is mentioned that having regard to his **past and recent antecedents**, there is every likelihood of his indulging in similar

prejudicial activities, adversely affecting the maintenance of public order and public health at large. Thus, he is being prevented from doing so by and an appropriate order of detention.

15. On a plain reading of the said para, we have no demur and are of the considered opinion that the respondents have taken the past and recent antecedents while passing the detention order dated 16.07.2016. The issue in the present petition raised by the learned counsel for the petitioner is no more *res integra* as has already been decided in **Chhagan Bhagwan Kahar's** case (1st supra) as discussed above, wherein it is specifically held that 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 subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order.

16. In the present case, admittedly earlier detention order dated 11.06.2015 was quashed by this Court vide order dated 29.12.2015 and the said detention order was passed based on five cases. Whereas, in the present case, though it is mentioned that they relied upon two cases registered against the detenu after quashing the earlier detention order, however, it is specifically mentioned that the past and present fresh cases are taken into consideration.

17. Keeping in view the settled law and the above discussion, we hereby quash the detention order dated 16th July, 2016. Consequently, the jail authorities are directed to release the detenu forthwith, if he is not required in any other case.

18. Accordingly, the Writ Petition is allowed.

Miscellaneous petitions if any pending in this petition, shall stands dismissed.

SURESH KUMAR KAIT,J

U.DURGA PRASAD RAO,J

14.03.2017
kvrn/murthy

