

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

W.P. No.5782 of 2018

ORDER : (per the Hon'ble Sri Justice C.Praveen Kumar)

This writ petition is filed seeking issuance of Writ of Habeas Corpus, directing the respondents to release the detinue forthwith by setting aside the detention order passed by the second respondent vide proceeding Crime No.SB-ID No.02/PD-KMM/2018, dated 10.02.2018.

2. The averments in the affidavit filed in support of the writ petition would show that the 2nd respondent-the Commissioner of Police and Additional District Magistrate (Executive), Khammam passed the detention order under Sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986), on the ground that the detinue is 'goonda' within the meaning of the said Act and that his activities are prejudicial to the maintenance of public order. It is further stated that as the activities of the detinue are detrimental to the public order, the order of detention was passed to prevent him from doing such activities. As seen from the record, the order of detention, which is passed by the 2nd respondent-the Commissioner of Police, was approved by the Government on 20th February, 2018 and the present writ petition also came to be filed on

20.02.2018, even before the order of the Commissioner could be confirmed by the Government.

3. The main ground urged by the learned counsel for the writ petitioner is that the order of detention do not, in any way, indicate that the detainee was given an opportunity to make a representation to the detaining authority or to the Government or to the Advisory Board, and non furnishing of such a right in the detention order is violative of Article 22 (5) of the Constitution of India. The second ground urged by the learned counsel is that the order of detention is silent as to the period for which the detention is made. According to him, the same is in violation of Section 3 of Act 1 of 1986.

4. A counter came to be filed opposing the averments made in the petition, stating that there is no violation of any provisions of the Act and that the order passed is in tune with the law laid down by the Apex Court in ***Haradhansaha and another Vs. State of West Bengal and others***¹. It is further contended that the writ petition has been filed prematurely, and that the writ petitioner should have waited till the Government has confirmed the order.

5. The counter filed by the respondents discloses that the detention order was passed on 10.02.2018, and along with the said order, the detainee was supplied with the grounds of detention, which are relied upon by the respondents while

¹ SCC p. 205, para 19

passing the order of detention. The grounds of detention refer to (5) crimes registered against the detainee. The first incident is in respect of Crime No. 197 of 2017 of Khanapuram Haveli Police Station registered for the offences punishable under Sections 356 and 379 IPC. The second incident is in respect of Crime No. 304 of 2017 of Khammam II Town Police station registered for the offences punishable under Sections 356 and 379 IPC. The third incident relates to Crime No.424 of 2017 of Khammam Rural Police Station for the offences punishable under Sections 356 and 379. The fourth incident also relates to the offences punishable under Sections 356 and 379 IPC, vide Crime No. 236 of 2017 of Nelakondapalli Police Station, and the fifth incident relates to Crime No. 467 of 2017 of Khammam II Town Police Station for the offences punishable under Sections 356 and 379.

6. The first ground raised by the learned counsel is with regard to not informing the detainee about his right to make a representation to the detaining authority, Advisory Board and also to the Government in the order of detention.

7. A perusal of the material on record would show that the grounds of detention as well as the order came to be served on the detainee on the very same day and the right to make a representation is reflected in the grounds of detention, which reads as under:

“You have a right to represent against this order of detention to (i) the detaining authority i.e., Commission of

Police, Khammam, (ii) the Principal Secretary to Government (Pol.), General Administration Department, Telangana, Hyderabad and (iii) the Advisory Board. If you choose to make any representation you may submit your property addressed representation with sufficient number of copies to the Jail Superintendent for onward transmission. You also have a right to appear before the Advisory Board and also to avail the assistance of a person other than an Advocate to represent your case”.

8. Therefore, the contention of the learned counsel that the detainee was not informed about his right to make representation to the authorities, appears to be incorrect.

9. The second ground urged by the learned counsel is that the detention order is silent as to the period of detention, which is violative of Article 22 (5) of the Constitution of India.

10. Issue identical to the case on hand came up for consideration before the Apex Court in **T.DEVAKI v. GOVERNMENT OF TAMIL NADU AND OTHERS**². It was also a case where non-mentioning of period of detention in the detention order was challenged before the Apex Court. The case arose under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug offenders, Forest-offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982), which are *pari materia* with the provisions of Act 1 of 1986. While dealing with Section 3 of the Tamil Nadu Prevention of Dangerous Activities of

² 1990 (1) SCC 456

Bootleggers, Drug offenders, Forest-offenders, Immoral Traffic Offenders and Slum Grabbers Act, which is identical to Section 3 of Act 1 of 1986, the Apex Court considered the view taken in ***Commissioner of Police and another Vs. Gurbux Anandram Biryani***³ and held as under:

It is thus clear that the view taken in Gurbux Biryani's case on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in the order the detenu is required to be under detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention.

We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining authority's failure to specify period of detention in the order”.

11. In view of the aforementioned judgment of the Apex Court, we feel that non intimation to the detenu regarding the period for which the detention is ordered, does not by itself vitiates the order of detention.

12. The third point urged by the learned counsel for the petitioner is that though it is stated that the detenu is involved in (13) crimes, only (5) crimes were made the basis for detention. According to him, in all the (5) crimes, there is no material

³ (1988) Supp.SCC 568

against the detainee, except the confession made by the co-accused before the police, which is inadmissible in evidence. It is to be noted here that while dealing with matters relating to preventive detention, it would not be appropriate for the Court to go into the merits of each crime, registered against the detainee. In fact, the said issue also came up for consideration in the judgment of the Apex Court, referred to above. It was held that the issue whether the detainee was actually involved in the commission of the offences in the said crimes and whether the authorities relied upon any admissible evidence to connect them with the crime, cannot be gone into in the petition, filed challenging the detention order.

13. The fourth ground urged by the learned counsel is that the detainee was released on bail on 09.01.2018 in Crime No. 236 of 2016, and the detention order came to be issued on 02.02.2018 without any case being registered against him during the interregnum.

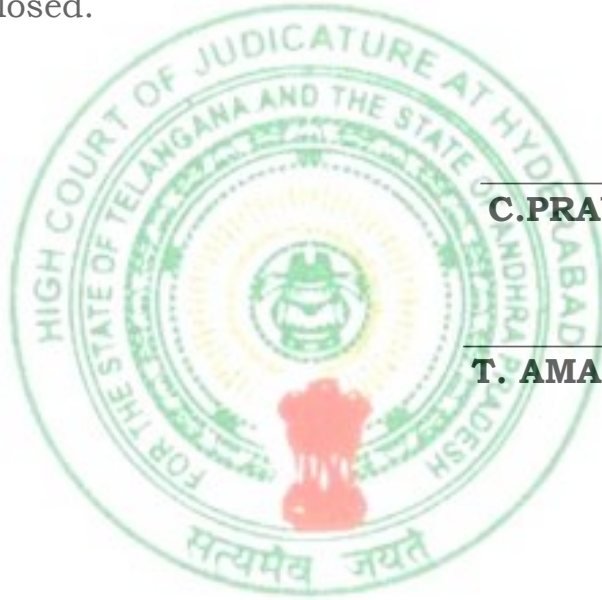
14. As seen from the record, about (13) crimes came to be registered against the detainee. All the offences registered against him were for the offences punishable under Sections 356 and 379 IPC. The detainee indulging in cases of similar nature, causing disturbance to public order made the respondents pass the order of detention. Merely because no crime was registered against him for a period of one month, i.e., from the date of his release on bail, till the date of detention order, that by itself will

not vitiate the order as the said order came to be passed with a view to prevent him from acting in a manner prejudicial to the maintenance of public order and see that he does not involve himself in similar offences.

15. For the aforesaid reasons, the writ petition is dismissed giving liberty to the petitioner to avail the remedies available under law, if any. No costs.

Consequently, miscellaneous petitions, if any, pending shall also stand closed.

16.04.2018
vhb/dmg



C.PRAVEEN KUMAR, J

T. AMARNATH GOUD, J