

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No. 8911 of 2018

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

1) The present writ petition came to be filed under Article 226 of the Constitution of India, seeking issuance of writ of habeas corpus directing the respondents to produce Suraj Pandith Gunjal, S/o. Pandith Govind Gunjal, before this Court and declare his detention vide order dated 08.12.2017 in C.No.170/ D1/ CCRB-LMM/ 2017, as confirmed by the Government vide G.O.Rt.No.133, dated 18.01.2018, as illegal and unconstitutional.

2) By an order dated 08.12.2017, the Commissioner of Police, Khammam (second respondent herein) passed an order of detention detaining the detainee under Section 3 (2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial offenders Act, 1986 (for short "the Act") as amended in Telangana Ordinance No.3 of 2017 on the ground that the detainee is a 'goonda' within the meaning of clause (g) of

Section 2 of the Act and with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order.

3) The grounds of detention furnished to the detenu, refer to four instances. The first instance is in respect of Crime No.111 of 2017 of Khammam I Town Police Station, registered for an offence punishable under Section 379 IPC. The allegations in the said report relates to an incident which took place on 27.05.2017. It is said that on that day while the informant therein was boarding the bus to go to her native place, some unknown offender committed theft of her purse containing cash of Rs.45,400/- . It is said that on 07.10.2017 the detenu was arrested while he was moving on suspicious circumstances. On interrogation, he is alleged to have admitted to have committed the offence in crime No.190 of 2017 as well. Basing on his confession he was arrested.

4) The second incident is said to have taken place on 19.06.2017, on which date at about 11.00 a.m., while the informant therein along with her husband went to gold shop in Khammam to sell the gold items. While the shop owners refused to purchase the gold item, she said to have kept the same in her purse. At about 4.30 p.m., she came to the bus stand to purchase some fruits and paid money to the vendor. While she was entering the bus she found her purse along with gold ornaments missing. On 07.10.2017 the detenu was arrested, wherein he is alleged to have confessed about the commission of offence. In respect of the above incident,

a case in Crime No.130 of 2017 of Khammam I Town Police Station, came to be registered.

5) The third incident is in relation to Crime No.179 of 2017 of Khammam I Town Police Station, which took place on 18.08.2017. The said case was also registered for an offence punishable under Section 379 IPC. The arrest of the detainee in the said crime was also shown on 07.10.2017.

6) The last incident relates to Crime No.190 of 2017 of Khammam I Town Police Station, registered for the offences punishable under Sections 356 and 379 IPC. It is said that on 12.09.2017 one Manneti Nageswara Rao, lodged a report stating that on that day his wife Sravanthi came to Khammam for purchasing cloths to their children. While she was proceeding to the cloth shop at Kaman Bazar, one unknown offender came behind her and snatched away a gold chain weighing about 1 ½ tolas from her neck. In the said case the detainee was arrested on 07.10.2017, while he was moving under suspicious circumstances. On interrogation, he is alleged to have revealed his name and also confessed about the commission of offence.

7) The detainee moved bail applications in the above crimes which were dismissed on earlier occasions and as on the date of passing of the detention order the bail applications moved for third time are pending consideration. It was specifically stated in the order and also in the grounds of detention that there is every likelihood of detainee being released on bail in the crimes as the

bail applications filed by him are pending consideration and if he is released on bail there is every possibility of he indulging in activities which are similar in nature. Having regard to the above, the second respondent herein passed the order of detention on 08.12.2017. The said order of detention was approved by the Government under Sub-section (3) of Section 3 of the Act vide G.O.Rt.No.2590, G.A. (Spl.(Law & Order) Department, dated 18.12.2017. The Advisory Board which was constituted under Section 9 of the Act, revised the case of detenu on 18.01.2018, and after hearing the detenu and his paternal aunt and uncle, opined that there was sufficient cause for detention of the detenu. After considering the report of the advisory board and the material available on record, the Government, in exercise of powers conferred under sub-section (1) of Section 12 read with Section 13 of the Act, confirmed the order of detention made by the second respondent, as approved by the Government earlier and directed detention of the detenu for a period of 12 months from the date of his detention. Challenging the same, the present writ petition came to be filed.

8) The only ground urged by the learned counsel for the petitioner is that passing of the detention order for a period of 12 months at a stretch, is contrary to the provisions of law. He placed reliance on the judgment of the Apex Court in *Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh and others*¹ in support of his plea.

¹ (2015) 13 SCC 722

9) A counter came to be filed opposing the pleas taken in the writ petition. It is specifically urged by the learned Advocate-General that in view of the subsequent judgment of the Apex Court in *Aravind Choudhary v. State of Telangana and another*² decided on 08.03.2017, which was based on a Three Judge Bench judgment of the Apex Court in *T.Devaki v. Government of Tamil Nadu and others*³, the order passed by the Government detaining the detenu for a period of 12 months cannot be found fault with.

10) As seen from the judgment placed before this Court, the learned counsel for the petitioner mainly relied upon *Cherukuri Mani's case (1 supra)*, which was decided on 08.05.2014. Para No.16 of the said judgment reads as under:

“Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the Legislature has specifically provided the mechanism “Advisory Board” to review the detention of a person. Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned Government Order directing detention for the maximum period of twelve months straightaway cannot be sustained in law.”

11) But the Advocate-General placed on record the judgment of the Apex Court in *Aravind Choudhary (2 supra)*, inter alia

² CrI.A.No.924 of 2017 (Spl.L.P.(CrI.) No.3646 of 2017)

³ (1990) 2 SCC 456

contending that mentioning the maximum period of detention in the order does not vitiate the detention order.

12) It would be also relevant here to refer to the three Judge Bench Judgment of the Apex Court in *T.Devai vs. Government of Tamil Nadu* (3 *supra*). It was a case where, T.Devaki, wife of the detenu, filed the above writ petition challenging the validity of the Detention Order dated 15.8.1989 passed against her husband by the Collector and District Magistrate of Kamarajar District Virudhunagar, Tamil Nadu on the allegation inter alia that the District Magistrate had issued the impugned order for detention of her husband, who is an active member of the All India Anna Drayida Munnetra Kazhagam party, an active social and political worker and ex-member of the Tamil Nadu Legislative Assembly, at the behest of Respondent No. 3-a Minister of the present DMK Government, on account of personal and political animosity between the two. The petitioner therein has referred to number of incidents and to the proceedings of the Tamil Nadu Legislative Assembly in support of her submission that there was political and personal animosity between the aforesaid Minister and her husband and the order of detention was made mala fide at the instance of the Minister, respondent No. 3 therein. The allegation against the detenu therein was that while a Seminar was going on, the detenu incited his men saying "Finish Durai Murgan's Chapter today" and so saying that he threw a dagger aiming at Thiru Durai Murgan, Minister but the dagger missed the target and fell down on the stage. Thereafter, the detenu took out a bottle containing

petrol and a matchbox out of a hand bag which he carried in his hand. Meanwhile, the Sub-Inspector of Police, caught hold of the detainee, seized the bottle and the matchbox. It is further stated that the detainee and those who accompanied him attempted to attack the Minister with knives in their hands but they were overpowered by the Police and the members of police. As a result of the incident those present in the hall panicked and got scared and ran helter-skelter, causing obstruction to traffic on Aruppukottai Road. The Seminar also came to an halt for a while. The detention order further states that the detenu by committing the aforesaid grave offence in public, in broad day light created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of the public order. His unlawful, disorderly and dangerous activities on 27.7.89 were prejudicial to the maintenance of public order which affected the even tempo of life of the community.

13) The said case came up before a Bench of three Judges, in view of the conflicting decisions of the Apex Court in *Commissioner of Police v. Gurbuz Anandram Bhiryani*⁴ and *Ashok Kumar v. Delhi Administration*⁵, on the question of validity of detention order when there is a failure to specify the period of detention. After considering the provisions of the Act, the Apex Court observed as under:

⁴ (1988) SCC (CrL.) 914

⁵ (1982) SCC (CrL.) 451

“The expression “the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order” occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The Legislature has taken care to entrust the power of detention to the State Government, as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed for a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3 (2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detainee is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.”

14) Referring to the three Judge Judgment of the Apex Court in *T.Devaki vs. Government of Tamil Nadu (3 supra)*, the Apex Court in *Aravind Choudhary (2 supra)* dealt with an identical situation and held as under:

“Learned counsel for the appellant, inter alia, relied upon the judgment of this Court in 2015 (13) SCC 722 *Cherukuri Mani W/o. Narendra Chowdary Vs. The Chief Secretary, Government of Andhra Pradesh and Others*,

and submitted that the period of detention cannot exceed three months as laid down in the said judgment.

We are unable to accept the submission made by the learned counsel as the limit of three months is applicable to Section 3 (2) of the above said Act and not to Section 3 (1). This is clear from three Judge Bench judgment of this Court in 1990 (2) SCC 456 *T.Devaki v. Government of Tamil Nadu* and others laying down as follows:

The expression ‘the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order’ occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The period as mentioned in Section 3 (2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained.

The observations in judgment of this Court in *Cherukuri Mani W/o Narendra Chowdari* (supra) cannot be read contrary to the observation in judgment of three Hon’ble Judges. Thus, limitation of period for delegation under Section 3 (2) does not control the period of detention for which power is exercised by the State Government which is laid down in Section 13 of the Act.

Accordingly, the appeal is dismissed.”

15) In view of the three Judge Bench of the Apex Court in *T.Devaki* (3 supra) and the subsequent judgment of the Apex Court in *Aravind Choudary case* (2 supra), which was decided basing on the judgment in *T.Devaki case* (3 supra), we hold that

the argument of the learned counsel for the petitioner that detention order should not have been passed for more than three months at a stretch cannot be accepted. Hence, we see no merits in the writ petition and accordingly, the same is dismissed.

16) There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

15.06.2018
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T. AMARNATH GOUD, J

