

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION NO.28116 OF 2017

ORDER: (per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present Writ Petition, the petitioner has challenged the order dated 17.06.2017, passed by the second respondent in Proc.No.C2/PDAC/02/2017/REV, which was confirmed by the first respondent vide G.O.Rt.No.1661, General Administration (Spl.(Law & Order) Department, dated 03.08.2017, whereunder the petitioner has been detained for a period of twelve months with effect from 18.06.2017.

2. Learned counsel for the petitioner mainly contended that on the date of passing of detention order, the detenu was in jail since 03.06.2017 in connection with Crime No.92/2017 of Prohibition and Excise Police Station, Dhoolpet, Hyderabad and the order of detention was passed by the second respondent on 17.06.2017. The Mandatory requirements for passing a detention order against the person in judicial custody, as held in the case of **Kamarunnissa v. Union of India**¹, are as under:

“ From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being

¹ (1991) 1 SCC 128

so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing.”

3. Learned counsel for the petitioner further submits that there was no cogent material before the detaining authority on the basis of which it might have satisfied that the detenu is likely to be released from the custody in a near future and it is likely that after release from the custody, he would indulge in the prejudicial activities and it is necessary to detain him in order to prevent his prejudicial activities. She further submits that the satisfaction of the detaining authority that as it is imperative to prevent the detenu from acting in a manner prejudicial to the maintenance of ‘public order’, it felt that recourse to normal law would involve considerable time and may not be effective deterrent in preventing him from illegal activities cannot be sustained for the reason that invoking the provisions of The Telangana Prevention of Dangerous Activities, Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 is not an alternative remedy to the normal law of the land. She further submits that before passing the detention order, the detaining authority should come to the satisfaction that without passing the detention order, the activities of the detenu which prejudicial to the public, would not be curtailed. The detaining authority has not come to such satisfaction and therefore the detention order dated 17.06.2017 deserves to be quashed.

4. On the other hand, learned Special Government Pleader appearing for the learned Advocate General submits that the detenu is involved in three crimes i.e., (i) Crime No.315/2016 dated 30.09.2016 of Police Station, Shahinayathgunj, Hyderabad District for the offences punishable under Sections 8(c) and 20(b) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act), (ii) Crime No.4/2017 dated 06.01.2017 of Prohibition and Excise Station, Dhoolpet, Hyderabad District for the offences punishable under Sections 8(c) and 20(b) (ii) (B) of the NDPS Act and (iii) Crime No.92/2017 dated 03.06.2017 of Prohibition and Excise Station, Dhoolpet, Hyderabad District for the offences punishable under Sections 8(c) and 20(b) (ii) (B) of the NDPS Act. He further submits that all three cases have been registered under the same Act and the detenu has already been released on bail in two cases, however, he is in judicial custody in Crime No.92 of 2017. Since the detenu was directed to be released on bail in similar offences, there is every likelihood of his release on bail in Crime No.92 of 2017. He further submits that on the basis of the material placed before the detaining authority, it apprehended that after release, the detenu will continue to indulge in similar activities which are prejudicial to 'public order'.

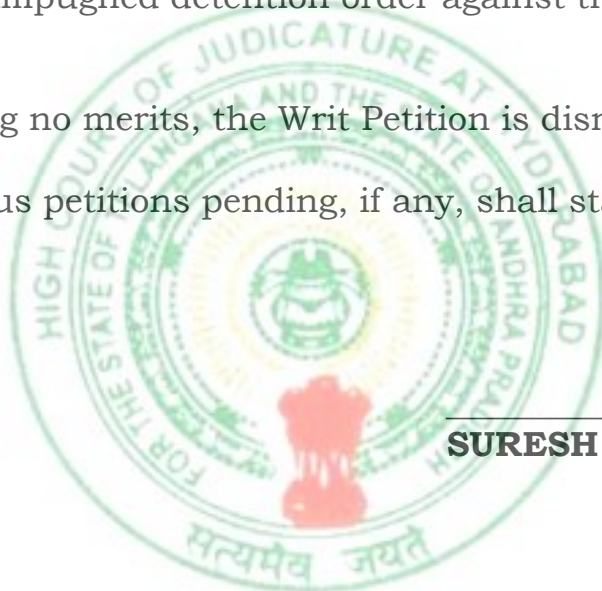
5. In case of **Kamarunnissa** (supra), it is held that even in the case of a person in custody, a detention order can validly be

passed if the authority passing the order is aware of the fact that he is actually in custody. In the present case, the detenu was released in two cases, however, in Crime No.92 of 2017, he was still in judicial custody. The second requirement mentioned in the said decision is that if the detaining authority has reason to believe on the basis of reliable material place before him (a) that there is a real possibility of his being released on bail and (b) that on being so released, he would in all probability indulge in prejudicial activity, however, if it is felt essential to detain him from doing so.

6. There is no embargo, as admitted by the counsel for the petitioner, to pass the preventive detention order while the detenu is in judicial custody. However, the cogent material should be before the detaining authority. In the present case, out of three cases of similar nature were filed against the petitioner, the detenu was released on bail in two cases, however, he is in judicial custody in Crime No.92 of 2017. There was cogent material before the detaining authority to believe that the detenu, at any time, may release on bail in Crime No.92 of 2017 and thereafter he will continue to indulge in similar activities which are prejudicial to 'public order'. It is not in dispute that in the detention order, the detaining authority, while arriving at the satisfaction, has mentioned that as it is imperative to prevent the detenu from acting in a manner prejudicial to the maintenance of 'public order', the detaining

authority felt that recourse to normal law would involve considerable time and may not be effective deterrent in preventing him from illegal activities. Thus, it can be said that the detaining authority, before passing the detention order, had the satisfaction that if the preventive order is not passed, the detenu, on coming out on bail, would resort to his past habits of selling dry ganja which is potentially harmful for human health and thus disturbs the 'public order'. Thus, we are of the opinion that there was sufficient material before the detaining authority to pass the impugned detention order against the detenu.

7. Finding no merits, the Writ Petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.



SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

Date: 02-01-2018
TJMR