

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.10916 of 2018

Between:

P. Deepika Bai

..... PETITIONER

VERSUS

The State of Telangana,
Rep. by its Principal Secretary,
General Administration (Special Law and Order)
Department, Secretariat, Hyderabad
and others

.... RESPONDENTS

ORDER PRONOUNCED ON : 15.06.2018

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

1. Whether Reporters of Local : Yes/ No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/ No
be marked to Law Reporters/ Journals
3. Whether Their Ladyship/ Lordship wish : Yes/ No
to see the fair copy of judgment

C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

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! Counsel for Appellant : Sri A.Prabhakar Rao

^ Counsel for Respondents : P.P. for the State of T.G.

< GIST :

> HEAD NOTE :

? Cases referred :

1. 1975 (3) SCC 198
2. (1989) 4 SCC 418
3. (2006) 3 SCC 312
4. (1990) 2 SCC 1
5. (1991) Supp.2 SCC 274
6. (2015) 16 SCC 253
7. (1991) 1 SCC 128
8. (2006) 2 SCC 664
9. (1985) 4 SCC 232

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

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WRIT PETITION No. 10916 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 Chapa Sunil Singh @ Papa Singh, S/o. Baiju Singh, now detained in Central Prison, Cherlapally, before this Court, and declare his detention order, dated 31.10.2017, issued vide Proceedings No.C3/ 4868/ 2017, as confirmed by the Government, vide G.O.Rt.No.2601, dated 20.12.2017, as illegal and unconstitutional.

2) The second respondent herein passed an order of detention, dated 31.10.2017, under Section 3 (1) & (2) read with Section 2 (a) and (f) 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"), on the ground that the detainee is a drug offender within the meaning of Section 2 (f) 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 served on the detenue refer to four instances. The first instance is in respect of Crime No.78 of 2017 of Prohibition and Excise Station, Serilingampally, Ranga Reddy District. The said case was registered under Section 8 (c) read with 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, on an allegation that the alleged detenue was found transporting 72 packets of ganja, at the time of interception of his vehicle on 18.05.2017. In the said crime, the detenue surrendered before the Court on 22.09.2017 and subsequently released on bail.

4) The second crime relates to an incident, which took place on 11.06.2017, wherein, on reliable information, the search party conducted a raid at the house of one Pulli Kumari. During the search, they found a plastic bag containing ganja. The said Kumari is alleged to have disclosed that the ganja was brought from the detenue at Rs.2,800/- per kg. In respect of this incident, a case in Crime No.89 of 2017 of Prohibition and Excise Station, Serilingampally, Ranga Reddy District, came to be registered. In the said crime, the detenue was arrested on 31.08.2017 and produced before the Court for judicial remand.

5) The third incident is in relation to Crime No.121 of 2017 of the very same Excise Station, which was registered for an offence punishable under Section 8 (c) read with 20 (b) (ii) of Narcotic Drugs and Psychotropic Substances Act. In the said case, the

police intercepted a motor cycle, which was transporting ganja. One of the persons sitting on the pillion seat ran away and the said person, who escaped, is said to be the alleged detainee. Even in this crime, his arrest was shown on 31.08.2017.

6) The last crime is said to have taken place on 31.08.2017. It is said that, on that day, at about 9.45 a.m., on reliable information about illegal transportation of ganja by one Papa Singh, the Inspector of Police, along with mediators, conducted route watch near Wipro Cross Roads, Serilingampally. On sighting a vehicle, which was moving in suspicious circumstances, the staff stopped the vehicle and questioned the driver, who disclosed his name as Chapa Sunil Singh @ Papa Singh (detainee). On search, they found 2250 grams of ganja in three covers. He is alleged to have confessed that he bought the ganja from a person by name Shanker Singh, who used to supply ganja to one Smt. Aruna Bhai and Arjun Singh as well. In view of the above crimes, the detention order came to be passed on 31.10.2017 with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order. Challenging the said detention order, the present writ petition came to be filed by the wife of the detainee.

7) Learned counsel for the petitioner would submit that there is total non-application of mind by the detaining authority while passing the detention order. According to him, since the detainee was in jail, as on the date of passing of the order, the grounds of detention should indicate the likelihood of detainee being released

on bail and also the likelihood of detinue indulging in similar activities, if not detained. Since the said satisfaction was not recorded, he pleads that the order of detention is liable to be *set aside* on that score alone.

8) A counter came to be filed by the respondents disputing the averments made in the affidavit filed in support of the writ petition. The learned Advocate-General (TG) would contend that since the order of detention as well as the grounds of detention indicate that the detention order came to be passed with a view to prevent the detinue from acting in a manner, which is prejudicial to the maintenance of the public order, itself is sufficient to show that there was an apprehension in the mind of the detaining authority that the detinue will indulge in similar acts, if released on bail. He further pleads that the Court does not interfere with the satisfaction arrived at by the detaining authority except in exceptional limited grounds. Since the detinue was committing offences of similar nature even after his release on bail in a crime registered against him for an offence of this nature, he pleads that the detaining authority was justified in coming to a conclusion that the detinue would involve in offences of this nature, if he comes out on bail. He relies upon the judgment of the Apex Court in *Haradhansaha and another v. The State of West Bengal and others*¹ in support of his plea.

9) The concept of preventive detention is that the detention of a person is not to punish him for something he has done but to

¹ 1975 (3) SCC 198

prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detainee acting in a manner similar to his past acts and to prevent him from doing the same.

10) As stated earlier, the main ground urged by the learned counsel for the petitioner is that there is no basis for the detaining authority to believe that there is a possibility of detainee coming out on bail. Such being the position, apprehension of the detaining authority that he would come out and involve himself in offences of this nature cannot be accepted.

11) Before dealing with the issue raised, it would be appropriate to refer to that portion in the grounds of detention (relied upon by both sides) wherein the detaining authority is said to have expressed his satisfaction, while passing the detention order.

12) The relevant portion in the grounds of detention, which was relied upon by both the learned counsel, in respect of their rival claims, is as under:

“I am aware that you are under judicial remand in Crime No.89 of 2017, dated 11.06.2017, 121 of 2017, dated 30.07.2017 and 138 of 2017 dated 31.08.2017 of Prohibition and Excise Station, Dhoolpet at Central Prison, Chenchalguda and on careful observation of your crime record placed before me, it show that you do not care for normal law of the land. You have been coming out on bail and repeating the illegal offence of possession and sale of Dry Ganja. It is brought to my notice that you have moved the bail petition and I have apprehension that on coming out on bail you would resort to your past habits of selling

Dry ganja which is potentially harmful for human health and thus disturbs the public order. Hence in order to prevent you from indulging in illegal sales of ganja, it is essential to detain you under the Act.”

13) The question is whether a reading of the above paragraph would indicate as to whether the detaining authority was satisfied as to the likelihood of detenu being released on bail and involve himself in committing offences of similar nature.

14) Before dealing with the same, it would be useful to refer to few judgments of the Apex Court.

15) In *N. Meera Rani v. Government of Tamil Nadu*², after considering the case law on the subject, the Supreme Court summarized the principle as under:

“We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his 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 any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is 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

² (1989) 4 SCC 418

in anticipation to operate on his release. This appears to us, to be the correct legal position.”

16) In *Sunila Jain v. Union of India and another*³, after referring to the earlier judgments in *M. Ahamedkutty v. Union of India*⁴ and *P.U. Abdul Rahiman v. Union of India*⁵, the Apex Court observed that whether a detenu on the date of passing of the order of detention was in custody or not would be a relevant fact and that it would also be a relevant fact whether he is free on that date and if he is, whether he is subjected to certain conditions pursuant to and in furtherance of the order of bail. The Court has applied the following twin-tests to know whether the constitutional mandate in the matter of preventive detention is in violation, namely (i) whether the impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (ii) whether relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority.

17) In *Champion R. Sangma v. State of Meghalaya and another*⁶, the Apex Court, after referring to the judgments in *Kamarunnisa v. Union of India*⁷, *T.V. Sravanan v. State*⁸, *Ramesh Yadav v. District Magistrate, Etah*⁹ etc., observed that even if the appellant is in jail in connection with some criminal case(s), there is no prohibition in law to pass the detention order. It has been held

³ (2006) 3 SCC 312

⁴ (1990) 2 SCC 1

⁵ (1991) Supp.2 SCC 274

⁶ (2015) 16 SCC 253

⁷ (1991) 1 SCC 128

⁸ (2006) 2 SCC 664

⁹ (1985) 4 SCC 232

that the law on this aspect is well settled and stands crystallized by a plethora of judgments of the Apex Court. The Court further held that a reading of those judgments also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order. The Court further held as under:

“In the instant case, though the detention order and even the grounds of detention record the factum of the appellant’s being in custody, no satisfaction has been recorded by the detaining authority that there was reliable material before the authority on the basis of which it would have reasons to believe that there was real possibility of his release on bail. It is not mentioned as to whether any bail application was even moved by the appellant or not, what to take out likely fate of such an application. The order is also conspicuously silent on the aspect as to whether there was any probability of indulging in activity if the appellant would be released on bail.”

18) In Kamarunnisa Case (7 supra), the Apex Court restated three factors, which 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 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. If the authority passes an order after recording his satisfaction in this behalf,

such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this court stated in the case of Pamesh Yadav (9 supra) was that ordinarily a detention order should not be passed merely to preempt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."

19) As stated earlier, the fact that the detaining authority was aware that the detenu was in judicial remand as on the date of passing of the detention order is not in dispute. The question would be whether basing on the material placed before him, the detaining authority has a reason to believe that there is a possibility of detenu being released on bail and on being released he would, in all probability, indulge in prejudicial activities. In other words, it has to be seen whether the detaining authority has recorded his satisfaction, on the basis of the material placed before him that he has reason to believe that the detenu is likely to be released on bail.

20) As seen from the grounds, referred to above, what has been mentioned was that the detainee has moved a bail application and an apprehension that, on coming out on bail, the detainee would resort to past habits of selling dry ganja. The recording of the detaining authority nowhere indicate that there was every possibility of detainee coming out on bail. Further, the grounds of detention show that it was brought to the notice of the detaining authority that the detainee has moved a bail application and he has an apprehension that on coming out on bail, the detainee would resort to his past habits.

21) The grounds and the order of detention, nowhere refer to the number of the bail petition filed and the Court where it is pending. The order and the grounds only indicate an apprehension of committing similar acts, if the detainee comes out on bail, but no satisfaction was recorded by the detaining authority as to the likelihood of detainee coming out on bail in this case. Further, pendency of bail application does not by itself *ipso facto* mean that he would be released on bail. The likelihood of detainee getting released on bail and coming out from jail, should have been specifically recorded before passing the detention order, for the reason that out of the four crimes registered against the detainee, he was released on bail in only one crime. The material nowhere indicate that the detainee has filed bail applications in the remaining crimes. The grounds only refer to filing of one bail petition. Even the grounds of detention show that it was brought

to the notice of the detaining authority that the detenu has moved a bail application.

22) It is to be noted that even if the detenu is released in the said crime, the possibility of he coming out on bail would not arise as no material was placed before the detaining authority to show that the detenu has moved bail applications in the two other crimes and that they are pending consideration.

23) In view of the judgments referred to above and for the aforesaid reasons, the Writ Petition is allowed. Accordingly, the impugned detention order is set aside and the detenu shall be set at liberty forthwith, provided he is not required to be kept in custody in connection with any other case/ cases registered against him.

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

C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

15.06.2018

Note: L.R. Copy to be marked.

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