

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Petition No.29861 of 2017

DATED:31-01-2018

Between:

Nerella Prabha Latha ... Petitioner

And

The State of Telangana
Rep. by its Principal Secretary (Political)
General Administration Department
Secretariat Building, Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. D. Surya Narayana

COUNSEL FOR THE RESPONDENTS: G.P. for Home (TS)

THE COURT MADE THE FOLLOWING:

ORDER: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

Proceedings in C.No.538/WRC/CSB-XI/2017, dated 28.6.2017 of respondent No.2, whereby he has ordered the detention of one Nerella Satish, husband of the petitioner (for short, "the alleged detenu"), are questioned in this writ petition.

2. The detenu is accused in three criminal cases, namely, Crime Nos.194 of 2014 and 175 of 2016 and Crime No.19 of 2017 registered for the offence under Section 8(c) read with Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"). While the first mentioned two cases were registered by the Kakatiya University Police Station of Warangal City, the third case was registered by Mothugudem Police Station of East Godavari District.

3. In the grounds for detention, respondent No.2 has referred to and relied upon Crime No.175 of 2016. It is stated therein that in connection with the said crime, involving seizure of 240 Kgs. of Ganja from the possession of Kallepu Bixapathi, Malothu Ramesh, Malothu Devender and Md. Habeeb Shah, were arrested and produced before the VI Judicial Magistrate of First Class, Warangal, on 13.9.2016, who remanded them to judicial custody. That the samples drawn from the contraband seized were forwarded to the Forensic Science Laboratory, Hyderabad, for

chemical analysis and report, which revealed that the “items are analyzed and cannabinol, an active constituent of well grown cannabis plant, commonly known as “Ganja” which is considered as Narcotic substance, was found in them. That the detenu, who was described as prime accused in the said offence and was absconding, was arrested on 29.12.2016 and produced before the VI Judicial Magistrate of First Class, Warangal, who remanded him to judicial custody.

4. It is further stated that the alleged detenu has moved a bail petition before the Special Sessions Judge for NDPS cases (I Additional Sessions Judge), Warangal, on 14.10.2016, vide Crl.M.P. No.524 of 2016 and the same was dismissed on 27.10.2016. That he moved a second bail application before this Court, being Crl.M.P. No.389 of 2017 and the Court has granted conditional bail to him on 13.01.2017 in pursuance of which the detenu was released on 9.2.2017. The detention order further stated that after the detenu was released on bail, he did not mend himself and continued to indulge in similar activities prejudicial to the maintenance of public order.

5. As evident from the detention order, on 16.6.2017 the detenu and his associates were arrested in connection with Crime No.19 of 2017 registered under Section 8(c) read with Section

20(b)(ii)(c) of the Act, of Mothugudem Police Station, East Godavari District, while transporting dry Ganja from Odisha to Maharashtra State, and remanded to judicial custody. It is further stated therein that presently he was lodged in Central Prison, Rajahmundry, and that there is every likelihood of his indulging in similar prejudicial activities, which are detrimental to public order, unless he is prevented from doing so by an appropriate order of detention.

6. Mr. D. Surya Narayana, learned counsel for the petitioner, strenuously submitted that respondent No.2 has not considered the fact that the bail application moved on behalf of the detenu in Crime No.19 of 2017 was dismissed before the impugned detention order was passed and that respondent No.2 has failed to take the said fact into consideration. He has further argued that after dismissal of the said application, the detenu has not moved any fresh application and that there was no basis for the satisfaction by respondent No.2 that there is every likelihood of the detenu being released from the judicial custody.

7. The learned Government Pleader for Home (TS), opposing the above submissions of the learned counsel for the petitioner, submitted that the detenu is a habitual offender as evident from the fact that he is an accused in three criminal cases associated

with drug peddling and that from the very fact that in the case based on which the impugned preventive detention order was passed, bail was granted to the detenu and that after his release on bail he repeated his activity of drug peddling leading to registration of Crime No.19 of 2017, shows that he is a habitual offender. He has further submitted that merely because one bail application was dismissed, it cannot be said that the detenu is not likely to be released in future and that the fact that he was already released earlier on bail in connection with the crime mentioned in the grounds of detention justifies the satisfaction of respondent No.2 that the detenu is likely to be released on bail.

8. We have carefully considered the submissions of the learned counsel for the parties and perused the record. The law is well-settled that in a case where the detenu was in judicial remand at the time of passing of the preventive detention order, the detaining authority must record his satisfaction that there is every likelihood of the detenu coming out of judicial custody and repeat the offences. As rightly pointed out by the learned Government Pleader, in the very case based on which the impugned detention order was passed, the detenu was released on bail. Merely because the bail application in relation to Crime No.19 of 2017

was dismissed, it cannot be said that there is no likelihood of the detenu being released on bail on a subsequent bail application.

9. In **N. Meera Rani v. Government of Tamil Nadu**¹, the Supreme Court held:

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

10. In the instant case, respondent No.2 has clearly recorded his satisfaction that there is every likelihood of release of the detenu. On the above discussed facts of the case, it cannot be said that his satisfaction is without any basis.

11. The learned counsel for the petitioner lastly contented that when an ordinary criminal law, such as the NDPS Act, which contains stringent provisions, is in force, there is no necessity of invoking the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immortal Traffic Offenders and Land Grabbers Act,

¹ (1989) 4 SCC 418

1986. This submission falls foul of the settled legal position as laid down by a Constitution Bench in **Haradhan Saha v. State of West Bengal**² wherein the Supreme Court held as under:

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

34. The recent decisions of this Court on this subject are many. The decisions in *Borjahan Gorey v. State of W.B.* [(1972) 2 SCC 550 : 1972 SCC (Cri) 888] , *Ashim Kumar Ray v. State of W.B.* [(1973) 4 SCC 76 : 1973 SCC (Cri) 723] ; *Abdul Aziz v. District Magistrate, Burdwan* [(1973) 1 SCC 301 : 1973 SCC (Cri) 321] and *Debu Mahato v. State of W.B.* [(1974) 4 SCC 135 : 1974 SCC (Cri) 274] correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in *Biram Chand v. State of U.P.* [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. **First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail**

² (1975) 3 SCC 198

custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

(emphasis is ours)

12. For the aforementioned reasons, the writ petition is dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

31-1-2018

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Note: LR copies to be marked.

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