

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

Writ Petition Nos.22447 and 22448 of 2017

DATED:24-01-2018

Between:

Dilkush Singh Meena ... Petitioner

And

The State of Telangana

Rep. by its Principal Secretary

Home Department

Secretariat, Hyderabad

and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. Hussain Amir, for
Mr. V. Raghunath

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



THE COURT MADE THE FOLLOWING:

COMMON ORDER:

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

These two writ petitions are filed assailing the detention of Shravan Kumar Kumavat @ Prem, S/o. Mohan Lal and Lakhan Singh Meena @ Lakhan, S/o. Keshav Meena, who are co-accused in all the criminal cases in connection with which the impugned detention orders dt.27.01.2017 have been passed.

2. Though the detention period of one year is almost coming to an end, on the submission of the learned counsel for the petitioner that even one day is valuable in the matter of preventive detention, we were inclined to hear the learned counsel in detail and dispose of the writ petitions on merits.

3. As the facts of both the cases are identical, it will suffice if we refer to the facts in W.P. No.22447 of 2017. The impugned detention orders have been passed based on seven criminal cases registered against the detenus, either under Section 379 read with Section 34 of the Indian Penal Code (IPC) or under Section 392 IPC. The detenus were granted bail in six out of the seven criminal cases. Apprehending that the detenus may move a bail application in Crime No.607 of 2016 and that they may be enlarged on bail, the impugned detention orders were passed by respondent No.2.

4. At the hearing, the only ground pressed into service by the learned counsel for the petitioner in order to challenge the impugned detention orders is that as the detenus were in judicial custody, respondent No.2 has committed a patent illegality in passing the orders of detention. In support of his submission, the learned counsel relied upon the judgments of the Supreme Court in **Yumman Ongbi Lembi Leima v. State of Manipur**¹ and **Sama Aruna v. State of Telangana**².

5. In **Yumman Ongbi Lembi Leima** (1 supra), the learned counsel relied upon the following paragraphs of the report.

“25....When the courts thought it fit to release the appellant’s husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified.”

The learned counsel has drawn our attention to the following paragraph of the judgment in **Sama Aruna** (2 supra).

“There is another reason why the detention order is justified. It was passed when the accused was in jail in Crime No.221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In **Ramesh Yadav v. District Magistrate, Etah and Ors.**, this Court observed as follows:-

“6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was release on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the

¹ (2012) 2 SCC 176

² AIR 2017 SC 2662

bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.”

6. The question as to whether the existing custody of a detenu vitiates the detention order is no longer *res integra*. In **N. Meera Rani v. Government of Tamil Nadu**³, after the review of the case law, the three-Judge Bench of the Supreme Court summarised the legal position as under:

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.

7. In **Union of India v. Paul Manickam**⁴, the Supreme Court held as follows:

“14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the

³ (1989) 4 SCC 418

⁴ (2003) 8 SCC 342

preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard 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 or economic stability 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. If the detaining authority is reasonably satisfied with cogent materials 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. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See *N. Meera Rani v. Govt. of T.N.* [(1989) 4 SCC 418 : 1989 SCC (Cri) 732 : AIR 1989 SC 2027] and *Dharmendra Suganchand Chelawat v. Union of India* [(1990) 1 SCC 746 : 1990 SCC (Cri) 249 : AIR 1990 SC 1196] .) The point was gone into detail in *Kamarunnissa v. Union of India* [(1991) 1 SCC 128 : 1991 SCC (Cri) 88 : AIR 1991 SC 1640] . The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.”

8. A Constitution Bench of the Supreme Court in **Haradhan Saha v. State of West Bengal**⁵ rejected the contention that as the detenu is liable to be tried 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, he is not liable to be detained under the preventive detention laws.

⁵ (1975) 3 SCC 198

While bringing out a clear distinction between ‘preventive detention’ and ‘punitive detention’, 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 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)

9. In the light of this legal position, we need to consider the two judgments relied upon by the learned counsel for the petitioner. A perusal of the three Judge Bench judgment in **Yumman Ongbi Lembi Leima** (1 supra) shows that it turned on its own facts as evident from paragraph 23 of the report, which reads as follows:

“Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that the (*sic* exercise of) extraordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of Yumman Somendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention.”

However, in paragraph 25 of the said judgment, which was already extracted above, the Supreme Court has observed that when the Courts thought it fit to release the detainee's husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified.

10. As noted hereinbefore, the judgment in **Haradhan Saha** (5 supra) in no uncertain terms held that 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. Though a part of paragraph 19 of the therein was extracted by the Court in **Yumman Ongbi Lembi Leima** (1 supra), paragraphs 32 to 34 of the judgment in **Haradhan Saha** (5 supra), which contain the ratio, have not been referred to and dealt with. Therefore, with due respect, the observations of the Supreme Court in **Yumman Ongbi Lembi Leima** (1 supra) are not in conformity with the ratio laid down by the Constitution Bench in **Haradhan Saha** (5 supra) and hence the said judgment cannot be treated as a binding precedent.

11. As regards the judgment in **Sama Aruna** (2 supra), the Supreme Court on the facts of the case found that the preventive detention was based on stale incidents, which is clearly evident from paragraphs 20 and 23 of the report, which are extracted hereunder:

“20. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in

respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute.

23. The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into account matters which ought not to have been taken into account.”

In paragraph 24 of the report, the Supreme Court relied upon the judgment in **Ramesh Yadav v. District Magistrate**⁶ for setting aside the preventive detention order and observed:

“24. There is another reason why the detention order is unjustified. It was passed when the Accused was in jail in Crime No. 221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In *Ramesh Yadav v. District Magistrate, Etah and Ors.* (1985) 4 SCC 232, this Court observed as follows:

6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.”

12. Indeed, the judgment in **Ramesh Yadav** (6 supra) was considered by a three-Judge Bench of the Supreme Court in **N. Meera Rani** (3 supra) and described the above mentioned

⁶ (1985) 4 SCC 232

observations as ‘passing’ observations. In paragraph 19 of the report the Supreme Court observed as under:

“ In *Ramesh Yadav v. District Magistrate, Etah* [(1985) 4 SCC 232 : 1985 SCC (Cri) 514] the detention order was passed when the detenu was in jail on the mere apprehension of likelihood of grant of bail on the basis of some stale grounds and a ground in respect of which the detenu had already been acquitted. It is obvious that even with the likelihood of grant of bail, the grounds of detention being stale or non-existent on the ground of the detenu's acquittal, they did not satisfy the required test of the detention order being based on valid grounds showing detenu's activities proximate in point of time to justify the detaining authority's satisfaction as reasonable. **It was observed in passing** that if the apprehension of the detaining authority about the likelihood of grant of bail was correct then it was open to challenge the bail order in a higher forum. This observation has accordingly to be read in the context of the facts in which it was made.”

(emphasis added)

After review of the entire case law, the Supreme Court in **N. Meera Rani** (3 supra) summarized the settled principles in paragraph 22 which was reproduced hereinbefore.

13. From the case law discussed hereinbefore, we do not find any merit in the contentions of the learned counsel for the petitioner and the writ petitions are accordingly dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

24-1-2018

bnr

Note: LR copies to be marked.

(BO)

bnr