

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

+ WRIT PETITION No.13649 of 2018

%17-07-2018

#Smt. Haleemunnisa Begum
... Petitioner

And

\$The State of Telangana, rep. by its Chief Secretary,
Secretariat Buildings, Hyderabad and others.
... Respondents

! Counsel for the Petitioner : Sri T. Ajay Kumar

^Counsel for the respondents : G.P. for Home (T.S.)

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>HEAD NOTE :

? CITATIONS : (1) LAWS (SC) 2017 7 71
(2) (1990) 2 SCC 456
(3) 2014 (2) R.C.R. (Criminal) 921



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Date: 17.07.2018

Between :

Smt. Haleemunnisa Begum

... Petitioner

And

The State of Telangana,
rep. by its Chief Secretary,
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Hyderabad and others.

... Respondents

COUNSEL FOR PETITIONER : Sri T. Ajay Kumar

COUNSEL FOR RESPONDENTS : G.P. for Home (T.S.)

THE COURT MADE THE FOLLOWING:

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

The detention of the petitioner's husband, by name Mohammed Munawar Ali @ Ganja Munawar @ Baraf (for short 'the detenu') vide order Ref.No.02/PDC/NZB/2018, dated 10.02.2018, passed by respondent No.3, as confirmed vide G.O.Rt.No.574, General Administration (Spl. (Law & Order) Department, dated 24.03.2018, issued by respondent No.2 under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity "the Act") is assailed in this writ petition.

A perusal of the grounds of detention shows that the detenu figured as an Accused in as many as 8 cases involving Narcotics Drugs. The grounds of detention, however, referred to and relied upon Crime No.6/2017 of Nizamabad Town-VI Police Station, Nizamabad; and Crime No.21/2018 of Nizamabad Rural Police Station, registered for the offences punishable under Section 20(b)(ii)(c) of the NDPS Act. The accusation against the detenu along with others is that they are transporting Ganja from Ravulapalem village of East Godavari District of Andhra Pradesh to the Parking Yard of the detenu at Nizamabad and that the detenu has ordered to provide 44 packets each containing 2 kgs of

Ganja paying Rs.80,000/- as an advance. The police have also seized certain quantities of Ganja from the detenu. Respondent No.3 in his detention order stated that though the detenu was arrested and remanded to judicial custody, considering the detenu's antecedent criminal back ground and involvement in Crime No.21/2018, he is satisfied that there is a likelihood of the detenu moving bail petition and coming out on bail and indulging in similar activities, which are prejudicial to the public order causing wide spread danger to public health.

At the hearing, Sri T. Ajay Kumar, learned counsel for the petitioner, advanced two submissions, viz., (1) that the impugned detention order did not specify the period of detention and that, therefore, the same is liable to be vitiated on the said ground alone. In support of his submission, the learned counsel placed reliance on the judgment of the Supreme Court in LAHU SHRIRANG GATKAL v. STATE OF MAHARASHTRA, THROUGH THE SECRETARY AND OTHERS¹; and (2) that the respondents have not followed the requirement of Section 10 of the Act by not referring the case of the detenu to the Advisory Board within three weeks from the date of his detention.

Opposing the above submissions, the learned Government Pleader for Home submitted that while the judgment in LAHU

¹ LAWS (SC) 2017 7 71

SHRIRANG GATKAL (1 supra), which was rendered by a 2-Judge Bench, a 3-Judge Bench in T. DEVAKI v. GOVERNMENT OF TAMIL NADU² held in specific terms that as the Act does not require the detaining authority to specify the period for which the detenu is required to be detained, the order of detention is not rendered invalid in the absence of such specification.

With regard to the second submission of the learned counsel for the petitioner, the learned Government Pleader submitted that the petitioner failed to raise necessary pleading in that regard in the writ petition.

In T. DEVAKI (2 supra), an identical question arose as to whether the detention order is rendered invalid, if the period of detention is not specified by the detaining authority. Answering this issue, a 3-Judge Bench of the Supreme Court at para-10 of its judgment held as under:

“10. Provisions of the aforesaid Sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained can not exceed 12 months from the date of detention. The Act nowhere requires the

² (1990) 2 SCC 456

detaining authority to specify the period for which the detenu is required to be detained. 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 detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification."

The 2-Judge Bench in LAHU SHRIRANG GATKAL (1 supra) relied upon its later judgment in CHERUKURI MANI v. CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH AND OTHERS³ in holding that the detention order

³ 2014 (2) R.C.R. (Criminal) 921

not specifying the period of detention is invalid. The relevant portion of the report reads as under:

“14. The requirement to pass order of detention from time to time in the manner referred to above, has got its own significance. It must be remembered that restriction of initial period of detention to three months, is nothing but implementation of the mandate contained in Clause (4)(a) of Article 22 of the Constitution of India. It reads as under:

Clause 4: No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament Under Sub-clause (b) of Clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament Under Sub-clauses (a) and (b) of Clause (7).

15. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the Government Order in the present case, directing detention of the husband of the Appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months, in one stroke, ignoring the cautious legislative

intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.”

The above extract of the judgment in CHERUKURI MANI (3 supra) referred to and relied upon in LAHU SHRIRANG GATKAL (1 supra) shows that, that was a case where the detention order has straight away mentioned the period of detention as 12 months contrary to Section 3 of the extant Act, envisaging the maximum cap of 3 months detention at any one time. The judgment in CHERUKURI MANI (3 supra) did not consider the case where the detention order did not specify the period of detention.

We noticed from the judgment in LAHU SHRIRANG GATKAL (1 supra) that the judgment in T. DEVAKI (2 supra) was not brought to the notice of the Supreme Court. With due respect, in view of the 3-Judge Bench judgment of the Supreme Court in T. DEVAKI (2 supra), this Court has no option except to follow the said judgment. In this view of the matter, we do not find any merit in the submission of the learned counsel for the petitioner.

With regard to the second submission of the learned counsel for the petitioner, admittedly, the petitioner did not raise the issue that the case of the detenu was referred to the Advisory Board

within the time stipulated under Section 10 of the Act. Unless a pleading in this regard is raised, we cannot expect the respondents to answer the same. Hence, it is not possible for us to consider this plea.

For the aforementioned reasons, we do not find any merit in this writ petition and the same is accordingly dismissed. No order as to costs.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

17.07.2018.

NOTE: L.R. Copies.
(B/O)
Msr



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