**HOB'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**
**AND**
**HON'BLE SRI JUSTICE P. KESHAVA RAO**

**WRIT PETITION No.22816 of 2018**

**ORDER:** (Per the Hon'ble Sri Justice P. Keshava Rao)

Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

The prayer sought in the writ petition is as under:

> "... this Hon'ble Court may be pleased to issue writ, order, direction particularly in the nature of writ of Habeas Corpus directing the respondent to produce the detenu by name Manmohan Singh, s/o. Eshwarlal, aged 40 years, R/o.H.No.13-1-1099, Balramgalli, Upper Dhoolpet Mangalhat, Hyderabad before this Court and set him at liberty by declaring the detention order dated 17.04.2018 issued in proceedings No.B6/209/2018 passed by the 2nd respondent which was approved in G.O.Rt.No.1108, dated 11.06.2018, General Administration (Law and Order) Department passed by the 1st respondent as illegal, arbitrary."

The case of the petitioner is that the detenu, namely, Manmohan Singh is her husband, that the detenu was issued with detention order dated 17.04.2018 on the ground that he was carrying activities prejudicial to the maintenance of the public order, and that he was falsely implicated in three criminal cases vide Crime No.274 of 2017 dated 13.12.2017 on the file of the Police Station, Mangalhat, Crime No.89 of 2018 dated 10.02.2018 and Crime No.115 of 2018 dated 07.03.2018 on the file of Prohibition and Excise Station, Dhoolpet, Hyderabad. It is the further case of the petitioner that as far as Crime Nos.274 of 2017 and Crime No.115 of 2018 are concerned, the detenu was implicated as an accused on the basis of the confessional statements of the co-accused and therefore, the registration of the above said two crimes on the basis of the confessional statements of the co-accused is unconstitutional. That when the said two crimes are not considered, the detenu cannot be detained merely relying on Crime No.89 of 2018 and he cannot be said to be a drug offender. The petitioner further averred that the material on record is not sufficient for the detaining authority to form an opinion that the acts of the detenu were causing adverse effect on the public health and that the same are prejudicial to the maintenance of the public order. The petitioner also averred that the grounds of detention, the detention order and the documents enclosed were not explained in the language known to the detenu, and that the non-supply of the documents in the language known to the detenu and the failure to explain the detention order resulted in the violation of the right of the detenu for making an effective representation against the detention order to the detaining authority as well as the advisory board. The petitioner further averred that the conclusion arrived at by the detaining authority that the detenu was resorting to transportation and selling of Ganja despite registration of cases and repeating the same offence even after releasing on bail is not sufficient for detaining the detenu.

Per contra, the 2nd respondent filed a counter affidavit denying the material allegations made in the affidavit filed in support of the writ petition and contented *inter alia* that from 2017 the detenu has been habitually engaging in unlawful activities such as illegal stocking, possession, transportation, distribution and sale of Ganja, a narcotic substance, in contravention of Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”). That even earlier, the detenu was detained by the Commissioner of Police, Hyderabad, twice during the years 2015 and 2016, but he was released by virtue of the orders passed by this Court in W.P.No.10257 of 2015 dated 08.09.2015 etc., that even after releasing from the preventive detention, the detenu did not stop his habitual unlawful activities and committed three offences as stated supra in a span of three months i.e., from 13.12.2017 to 07.03.2018. It is also stated in the counter affidavit that the mandatory procedure as contemplated under the provisions of the NDPS Act is strictly complied with and there is no illegality or violation of any of the provisions of the NDPS Act while passing the impugned detention order. The 2nd respondent denied the allegation of the petitioner that the detention order as well as the grounds of detention and the documents enclosed along with the grounds of detention were not translated into the Hindi language and furnished to the detenu. The 2nd respondent further averred that since the detenu refused to receive the spiral binding booklet containing all the material papers, the same were served on his brother Naresh.

Having heard both the counsel and perusal of the material on record, the point that arises for consideration is:

> Whether the detenu is a drug offender and if so, whether the detention order passed is legal and valid in the eye of law?

The definition of "Drug Offender" under Section 2(f) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (for short, "the Act") is as under:

> "2(f). Drug Offender means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of the provisions of Drugs and Cosmetic Act, 1940 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) and Rules, notifications and orders, under either Act, or in contravention of any other law for the time being in force, who knowingly expends or applies any money in the above mentioned things by himself or through any other person or who abets in any other manner the doing of any such thing."

A plain reading of the above reproduced provision would indicate that a person, who deals with any drug or cultivates any plant or does any other thing in contravention of the provisions of the Drugs and Cosmetics Act, 1940 or the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Rules and notification and orders, and is knowingly expends or applies any money in the above mentioned things by himself or through any other person, or abets in any other manner the doing of any such thing, is a drug offender. The three cases referred to supra were registered against the detenu due to contravention of the provisions of Sections 8 and 20 (b) of the NDPS Act and therefore the detenu squarely falls within the definition of "drug offender" as defined under Section 2(f) of the Act.

The basis for preventive detention is the subjective satisfaction of the executive authority on a reasonable probability of the likelihood of the detenu acting in the manner similar to his past and preventing him by detention from doing the same.

In **Haradhan Saha vs. State of West Bengal and others**[1] the Apex Court held as under:

> "The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent.
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> 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 over lap 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."

In the case on hand, from the perusal of the record, and particularly the detention orders, there is sufficient material for the detaining authority to conclude the detention orders against the detenu to detain him for a period of 12 months as required under Sections 12 and 13 of the Act.

It is relevant to mention here that in Crime No.274 of 2017 the detenu was arrested on 23.12.2017. He came out on bail on 03.01.2018. However, within five weeks the petitioner committed

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[1] AIR 1974 SC 2154

another offence registered as Crime No.89 of 2018 on 10.02.2018. In the said crime, the petitioner was granted bail vide Crl.M.P.No.586 of 2018 dated 01.03.2018 by the learned I Additional Metropolitan Sessions Judge, Hyderabad. Immediately, thereafter, i.e., on 07.03.2018, the petitioner involved himself in Crime No.115 of 2018. Thus, in a span of three months, the petitioner involved himself in three offences as stated supra. The basic ingredient for passing a detention order is the subjective satisfaction of the detaining authority on the basis of the material available on record. When once it is established that there is sufficient material, this Court cannot interfere with the subjective satisfaction reached by the detaining authority.

In **Subramanian vs. State of Tamil Nadu and another**[2], the Apex Court held as under:

> "From the above materials, the detaining authority was satisfied that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a "goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The order further shows that the detaining authority found that there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order.
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> It is well settled that the Court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds. The Court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the detaining authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an

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[2] (2012) 4 SCC 699

> exhaustive manner. The satisfaction of the detaining authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion."

In the light of the settled legal position as above, this Court is of the opinion that there is no irregularity or illegality in the impugned detention orders passed by the 1st and the 2nd respondents. There are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall also stand dismissed.

**C.V. NAGARJUNA REDDY, J**

**P. KESHAVA RAO, J**

Date: 30.11.2018.
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