

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

WRIT PETITION No.3771 OF 2017

ORDER:

(Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner seeks direction thereby to declare detention order vide SBI No.523/PD/S-1/2016, dated 04.11.016, which has been confirmed by the Advisory Board vide G.O.RT No.125, dated 11.1.2017, as illegal, arbitrary, discriminatory and in violation of Article 21 of the Constitution of India.

2. As stated in the affidavit filed in support of the present petition that earlier one Banappa, aged about 22 years, was subjected to custodial torture which untimely resulted in death in Maredpally Police Station, Hyderabad. The said Banappa had died on 03.08.2015, due to which, the family members of the deceased, neighbour and well wishers staged protest before the Government authorities including District Collector seeking action against the police who are responsible for the custodial death of Banappa. The respondent police to disperse the crowd gathered in front of the police station, had indiscriminately resorted to high handedness and mercilessly beaten the people there. Aggrieved by the brutal attack by the Marredpally police, the husband of the petitioner (hereinafter referred to as the "detenu") along with other neighbours, basti people and civil rights organizations also went to the office of District Collector and made a representation in this regard. It is further stated that the respondent police by taking undue advantage of the office, foisted the proceedings impugned

herein by making false allegations. The impugned proceedings are nothing but harassment of the detenu and his family members and similarly placed persons in their neighbourhood.

3. Learned counsel further submits that in the detention order dated 04.11.2016 the detaining authority mentioned seven (7) offences including riotings, attack on police station, damaging the public property, criminal trespass and criminal intimidation in the limits of Hyderabad City Police Commissionerate. However, the detaining authority has relied on two cases registered vide Crime No.247 of 2016 for the offence punishable under Sections 365, 195-(A), 465, 341, 342, 509, 506, 109 read with 34 IPC of Maredpally Police Station and Crime No.172 of 2016 for the offence punishable under Section 323, 448, 506 and 509 IPC of Lalaguda Police Station.

4. The first case against the detenu vide Crime No.247 of 2016 was registered on the allegation that on 08.05.2016, the detenu along with his associates came to the house of the complainant Smt M. Narasamma, R/o H.No.10-1-54, Alladipentaiah Nagar, West Marredpally, Secunderabad and forced her to withdraw the case and said that Chirraboyina Krishna Yadav @ Golla Kittu would pay Rs.10 lakhs for the said purpose, but the same was bluntly refused by herself and her other family members. However, on 09.05.2016, the detenu along with his associates again came to her house and kidnapped her and her son M.Ramesh and took them to the office of the Badri Yadav, where Shyamsunder Reddy, Krishna Yadav, Raju Yadav, Eswar Yadav and Sunny Yadav (associates of Chirraboyina Krishna Yadav

@ Golla Kittu) were present. There, they forcibly obtained her signatures and the signature of her son. Thereafter, a bag which contains Rs.5 lakhs was handed over. Chirraboina Krishna Yadav @ Golla Kittu stated that he would transfer another Rs.5 lakhs to the joint bank account of the complainant and her son after withdrawal of the case. Due to fear, the complainant and her son brought the cash along with them and kept the same at the house of their relatives.

5. Apart from above incident, on intervening night of 5/06.09.2016, while the complainant was on her way to attend some work at East Marredpally, Chirraboina Krishna Yadav @ Kittu came on Activa Scooter, forcibly intercepted the complainant and threatened her that if she failed to compromise in the case of her son M.Shekar's murder, another son M.Ramesh would also be murdered.

6. Further, Sai Yadav and Eswar Yadav have been persistently teasing M. Madhavi and M. Meena (grand daughters of the complainant) when they go to attend their college for effecting a compromise in the murder case. Moreover, when the son of the complainant namely M.Ramesh was present at Route No.37 bus stop, Secunderabad, one Ghouse approached him and revealed that Chirraboina Krishna Yadav @ Golla Kittu has given him ransom to murder him through hired assassins. Unable to bear constant threats and harassment, the complainant lodged a complaint with Marredpally police station, accordingly on 19.09.2016 the police registered a case in Crime No.247 of 2016 under the provisions of law as mentioned above.

7. Another case against detenu vide Crime No.172 of 2016 was registered on the allegation that on 25.08.2016 at about 10.00 hours, Ramu (son of the detenu) criminally trespassed into the house of the complainant Smt D.Vijaya Lakshmi, R/o Railway Quarter No.324/1, Near Nalla Pochamma Temple, North Lalaguda, Secunderabad and abused her in filthy language uttering “Badmashdana maa daddy rammantey raava”. In the meantime, the detenu also criminally trespassed into the house of the complainant, dragged her out of the house by catching her hand and abused her in filthy language uttering ‘Lanjadana rammante raava’. He also caught hold of her plait and beat her in her stomach, demanding to register her house plot situated at Bhuvangiri of Nalgonda District in his favour over a dispute regarding payment of hand loan of Rs. 4 lakhs, which was borrowed by the complainant from the detenu.

8. Learned counsel appearing on behalf of the petitioner submits that when the detenu along with other villagers protested against the death of Banappa who died on 03.08.2015 to the District Collector and the police station, thereafter only, all the cases were registered against the detenu by misusing their power with the motive that the detenu shall not raise voice against the police authority for the custodial death of the above named Banappa. He submits that before the death of Banappa not even a single criminal case was registered against the detenu, however case after case were registered against the detenu after the said incident for the purpose mentioned above. Thus not only the police misused its power by registering the cases but also passed the impugned detention order dated 04.11.2016.

9. On the other hand, learned counsel appearing on behalf of the respondent submits that total seven cases are registered against the detenu, however the detaining authority has relied upon only two cases noted above. The detention order was passed on the ground that the activities of the detenu were prejudicial to the maintenance of public order and under the ordinary law, it would not be possible to deal with illegal activities of such a rowdy element who has no regard to the human life and dignity.

10. Learned counsel further submits that the detaining authority applied its mind on the material produced before and thereafter passed the detention order which is justified under the law.

11. We have heard the learned counsel appearing on behalf of the petitioner and the respondent.

12. It is not in dispute that five cases were registered against the detenu for attacking the police station and damaging the property of the same. It establishes that the detenu raised voice against the custodial death of the deceased Banappa. It is also an admitted fact that above noted crimes were registered against the detenu after the death of Banappa and, based upon Crime No.172 of 2016 registered on 27.08.2016 and a case in FIR No.247 of 2016 on 19.09.2016, the detention order dated 04.11.2016 was passed.

13. It is also not in dispute that Crime No.247 of 2016 was registered five months after the date of alleged occurrence. Whereas Crime No.172 of 2016 was registered on the allegation that on 27.08.2016 at 18.30 hours received a complaint from D

Vijaya lakshmi, stating that her husband worked as a railway employee and he died in 2009. She had taken a hand loan of Rs.4 lakhs from the detenu. Since then, the detenu had taken her passbook, her sons pass book and ATM cards (bank of India). As she was paying a loan amount of Rs.1700/- she was getting remaining Rs.10,300/- every month pension, and her son's salary of Rs.16,000/-, thus total amount of Rs.26,300/- used to be taken by the detenu every month from the complainant. On 25.08.2016 at 10.00 hours, Ganta Raju's son by name Ramu came to her house and said that his dad calling her, then the complainant offered a chair to the said Ramu, however, he kicked that chair by abusing in filthy language "Badmashdana, maa dad rammantey rava". Meanwhile, Ganta Raju entered the complainant's house and said "Naa koduku pilisthey ravadam ledenti? Enduku?" and pulled her outside by holding her hand and abused in filthy language "Lanja dana rammantey rava". Moreover, by catching her hair, used feast blow in the stomach by asking to transfer her plot situated at Bhuvangiri.

14. It is specifically stated in the grounds of the detention order that the detenu moved anticipatory bail application before the Special Judge for Trial of Offences under SCs/STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, in Crime No.247 of 2016. But the same was dismissed vide order in CrI.M.P.No.2883 of 2016, dated 07.10.2016. Thereafter, the detenu was arrested on 10.10.2016. Again he moved a bail application before VI Additional Metropolitan Sessions Judge at Nampally, Hyderabad on 13.10.2016 and the same was also dismissed vide order in CrI.M.P.No.3004 of 2016, dated

28.10.2016. Hence, he continued to be in judicial custody. It is further stated that as the detenu has been making efforts to come out from prison, he may again move a bail application, and there is every likelihood of his release from judicial custody very soon. Thereafter, 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.

15. It is not in dispute that Crime No.172 of 2016 was filed on the complaint of detenue's brother's mother-in-law. As stated by the learned counsel for the petitioner, the said matter has been settled between the detenu and the complainant. In a case FIR No.247 of 2016, despite the best efforts by the detenu, he was not released either on anticipatory bail or regular bail and this very fact is noted in the grounds of detention order. Thereafter, he did not move any bail application, however the detaining authority has passed the detention order dated 04.11.2016 against the detenu without any material of being involved in similar crime.

16. It is settled law that the detention order has to be passed to curtail the illegal activities of the detenu but in the present case, the detenu was already in jail in Crime No. 247 of 2016, and there was no danger from the detenu and prejudicial to the public peace, tranquility and maintenance of the public order.

17. In case of **BHUT NATH METE Versus THE STATE OF WEST BENGAL**¹, the Supreme Court has held as under:

“11. The strict construction of the statute setting the Court's face sternly against encroachment on individual liberty, keeping the delicate balance between social security and citizen's freedom, is

¹ (1974) 1 Supreme Court Cases 645

*perfectly warranted by this Court's observation in **Kishori Mohan Bera v. State of West Bengal**² (at page 847, para 4) “The Act confers extraordinary power on the executive to detain a person without recourse to the ordinary laws of the land and to trail by Courts. Obviously, such a power places the personal liberty of such a person in extreme peril against which he is provided with a limited right of challenge only. There can, therefore, be no doubt that such a law has to be strictly construed. Equally also, the power conferred by such a law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law.*

12. *In a sense this approach is only an application of the insistence of fairness when power is exercised to affect other's rights, particularly the most sensitive of all rights—personal freedom. Natural justice is the index of fairness, although as Sachs, L.J., indicated in *In re Pergamon Press Ltd.*³*

18. In *A.K. Kriapak v. Union of India*⁴, the Supreme Court held that the concept of rule of law would loose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.

19. It is trite that the act confers extraordinary power on the executive to detain a person without recourse to the ordinary laws of the land and to be tried by the Courts. Obviously, such a power places the personal liberty of such a person in extreme peril against which he is provided with a limited right of challenge only. There cannot be no doubt that such a law has to be strictly construed. Similarly, the power

² (1972) 3 SCC 845 : 1973 SCC (Cri) 30

³ (1971) 1 Ch D 388.

⁴ (1969) 2 SCC 262

conferred by such a law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law.

20. In another case of ***N.SENGODAN Versus STATE OF TAMIL NADU, through Secretary to Government, Home (Prohibition and Excise) Department, Chennai and others***⁵, the Supreme Court has held that personal liberty is of the widest amplitude covering variety of rights. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the supreme law, the Constitution. The investigator must be alive to the mandate of the Constitution and is not empowered to trample upon the personal liberty of a person when he has acted by mala fides, as held by this Court in ***P.P.Sharma***⁶.

21. In another case of ***Smt Pilli Yeteswari and another vs. The Govt. of A.P. rep by its Chief Secretary and others***⁷, the Supreme Court has held as under :

“9. Of all fundamental rights conceded to the citizens under our Constitution, the right of personal liberty is the most cherished one. A person is not to be deprived of the right except in accordance with the procedure laid down by law even if he may be a man of the most desperate character. The law relating to preventive detention has hence always been very strictly interpreted so as to uphold the concept of individual freedom and the Courts have always acted to safeguard the purity of such right which is available to be interfered with only under the most stringent and rigorous conditions. It is for such reason it has been the consensus that while the interest of the society is paramount, yet the rights of the individuals so far as their personal liberty is concerned is to be equally balanced vis-à-vis those rights of the society and that the right of the individual in that regard is not to be made either a scapegoat or a martyr for the cause of the society unless duly sanctioned by law.”

⁵ (2013) 8 Supreme Court Cases 664

⁶ 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192

⁷ 1996 (4) ALT 485 (D.B.)

22. It cannot be disputed that the investigator must be alive to the mandate of the Constitution and is not empowered to trample upon the personal liberty of a person when he has acted by mala fides, as held by the Supreme Court in **P.P Sharma's** case (6 Supra). A person must not to be deprived of the right except in accordance with the procedure laid down by law even if he may be a man of most desperate character. The law relating to preventive detention has hence always been very strictly interpreted so as to uphold the concept of individual freedom and the Courts have always acted to safeguard the purity of such a right which is available to be interfered with only under the most stringent and rigorous conditions.

23. We note in the detention order dated 04.11.2016 which is under challenge the detaining authority while passing the said order has relied upon the two cases as discussed above. However, the sponsoring authority has furnished the details of seven (7) offences registered against the detenu including riotings, attack on police station, damaging the public property, criminal trespass and criminal intimidation. It is specifically stated in the detention order that the detaining authority has relied upon only two cases. The sponsoring authority has to be fair that the material based upon the detention order to be passed, has to be supplied to the detaining authority. Simultaneously, the detaining authority has also to take into consideration the cases on which sponsoring authority seeks to pass the detention order. If the detaining authority while passing the detention order or relying upon only two cases, then if the sponsoring authority has furnished the other

cases, which are not relied upon, that certainly would pollute the mind of the detaining authority while passing the detention order.

24. In a case of **Kirit Kumar Chaman Lal Kundaliya Versus Union of India and others**⁸, the Supreme Court has held that there is no particular charm in the expressions 'relied on', 'referred to' or 'based on' because ultimately all these expressions signify one thing, namely, that the subjective satisfaction of the detaining authority has been arrived at on the documents mentioned in the grounds of detention.

25. Keeping in view the facts recorded above and the settled law, we are of the considered opinion that the detaining authority has mala fide and intentionally imposed detention order upon the detenu.

26. Accordingly, the Writ Petition is allowed. The detention order passed by the 2nd respondent in SBI No.523/PD/S-1/2016, dated 04.11.016 is hereby quashed. Consequently, the concerned police authorities are directed to release the detenu forthwith, if not required in any other case.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

Date : - -2017
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⁸ (1981) 2 Supreme Court Cases 436

