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

Writ Petition Nos.32168 and 38033 of 2017

DATED:21-02-2018

W.P. No.32168 of 2017
Between:

Md. Saleem … Petitioner

And

The State of Telangana
Rep. by its Chief Secretary
General Administration (Law and Order) Department,
Secretariat, Government of Telangana,
Hyderabad,
and others … Respondents

COUNSEL FOR THE PEITITONER : Mr. Nargis Afshan Khan
COUNSEL FOR THE RESPONDENTS: G.P. for Home (TS)

W.P. No.38033 of 2017
Between:

Md. Nimra … Petitioner

And

The Director General of Police
Telangana State
Hyderabad
and others … Respondents

COUNSEL FOR THE PEITITONER: Mr. I. Laxmikantha Rao

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 writ petitions involve identical issues. Hence, they are heard and being disposed of together.

2. Md. Yakoob Pasha, S/o. Md. Saleem (for short, "detenu No.1") was detained by respondent No.2 under sub-section (2) of Section 3 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"). His father has filed W.P. No.32168 of 2017 seeking quashing of the said order as confirmed by G.O. Rt. No.1648, dt.01.08.2017.

3. A perusal of the impugned detention order shows that respondent No.2 has relied upon three crimes, namely, Crime No.70 of 2017, Crime No.80 of 2017 and Crime No.82 of 2017. The first mentioned crime was registered for the offence under Section 392 IPC in Hanamkonda Police Station, the second mentioned crime was registered for the offence under Section 395 IPC in Hasanparthy Police Station and the third mentioned crime was registered for the offence under Section 395 IPC of Hasanparthy Police Station. The gravamen of the allegation against detenu No.1 is that he along with his associates, by name, Md. Biya Bani, Sk. Younus, Md.

Aleemuddin, Md. Mukthiyar and Md. Saleem waylaid the complainants, threatened and robbed from them valuable jewellery etc. Md. Mukthiyar (for short, "detentu No.2"), one of the associates of detenu No.1, was also detained by a similar detention order passed by respondent No.2 and the same was questioned by the wife of Md.Mukthiyar in W.P. No.38033 of 2017. However, the said order is neither filed nor questioned on behalf of detenu No.2. She only questioned G.O.Rt. No.1632, dt.27.7.2017, confirming the said detention order, of the State of Telangana, but the State has not been impleaded as the respondent. Be that as it may, on the same allegations on which detenu No.1 was detained, detenu No.2 was also detained.

4. The only ground canvassed by the learned counsel for the petitioners before us is that the detenus are not habitual offenders and that therefore their detention is not legal. In support of this submission, Ms. Nargis Afshan Khan, learned counsel for the petitioner in W.P. No.32168 of 2017, relied upon the judgment in **Anand Prakash v. State of U.P.**[1].

5. In **Anand Prakash** (1 supra), the Supreme Court held that when the detenu is already in jail, though the detention

[1] (1990) 1 SCC 291

must be based on the detaining authority's satisfaction, the detention shall not be made unless the detaining authority arrives at the subjective satisfaction based on the detenu's past activities and credible information or material that there is a likelihood of the detenu repeating the criminal activities on his release on bail.

6. In the detention order impugned in W.P. No.32168 of 2017, respondent No.2 has stated as under:

> "You have already moved bail petitions in above cases and the Honourable Magistrate granted bail to you in Cr. No.80/2017 of Hasanparthy Police Station. However, when the Asst. P.P. filed petition praying to cancel the bail, the Honourable Magistrate initially cancelled the bail granted to you, but subsequently, when you filed bail petitions second time, the Honourable Court granted bail to you. You have also filed bail petitions in Cr. Nos.82/2017 of Hasanparthy Police Station. The first bail petition was filed on 27.03.2017 and the second bail petition was filed on 27.04.2017. Both the bail petitions were dismissed on 15.04.2017 and 05.05.2017 respectively. Similarly, you have filed bail petitions in Cr. No.70/2017 of Hanamkonda Police Station and the same is pending for orders. Hence, you continue to be in judicial custody in all the cases. As you have been making efforts to come out of the jail on bail in the above cases, there is every likelihood of your release from judicial custody soon in all the cases. On your release from judicial custody, there is every likelihood of your indulging in similar prejudicial activities, which are detrimental to public order, unless you are prevented from doing so by an appropriate order of detention."

The above reproduced portion of the order would clearly reveal not only that respondent No.2 has shown his awareness of the efforts of detenu No.1 to come out on bail, but also recorded his satisfaction based on the facts referred to by him that there

is every likelihood of the release of detenu No.1 from judicial custody soon and his indulging in similar prejudicial activities detrimental to public order. Though the petitioner in W.P. No.38033 of 2017 has not questioned the detention order, a copy of the detention order placed before us by her shows that similar observations were made by respondent No.3 against detenu No.2.

8. **N. Meera Rani v. Government of Tamil Nadu**[2], after referring to the relevant case law on the issue, the Supreme Court held 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."

9. Having regard to the facts of the cases discussed as above, we are of the opinion that the detaining authority based on the material has arrived at the subjective satisfaction that the

[2] (1989) 4 SCC 418

activities of the detenus are prejudicial to the public order and that their detention was necessary to protect the public order. The detaining authority has also shown his awareness that the detenus are in judicial custody and their likelihood of being released on bail and repeating the similar activities. Therefore, we do not find any illegality in the impugned detention orders.

The writ petitions are accordingly dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

21-2-2018

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