

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B.RADHAKRISHNAN
AND
HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT PETITION No.918 of 2019

ORDER: (per Hon'ble Sri Justice A.Rajasheker Reddy)

This Writ Petition is filed seeking a Writ in the nature of Habeas Corpus directing the respondents herein to produce and safeguard the petitioner's brother, namely Sellam Vinay Kumar, S/o Narsimha Swamy, aged about 36 years, who is illegally confined at Central Prison, Cherlapally, Medchal-Malkajgiri District, under the guise of Preventive Detention Law without furnishing any of the material papers to the brother of the petitioner till date and to direct the respondents herein to take measures for protection of his life and liberty.

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the petitioner is the brother of the detenu, who is a M.C.A. graduate and was working in I.T. Industry. The detenu was falsely implicated in Crime No.825 of 2018 on the file of Madhapur Police Station for the offences punishable under Section 370 (2) I.P.C. and Sections 3, 4, 5 and 6 of Prevention of Immoral Traffic Act, 1956. The detenu was arrested on 08.10.2018 and remanded to judicial custody on 09.10.2018 and that he was lodged in Central Prison, Cherlapally. It is alleged that the detenu has been subjected to illegal action by Police and that he has been tortured either while he is in Police custody or in custody

on the basis of a remand order. On 09.11.2018, the 2nd respondent-Commissioner of Police, Cyberabad Commissionerate, Telangana State, passed a detention order against detenu under sub-Section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (Act No.1 of 1986) (for brevity 'the Act of 1986) on the ground that the detenu had been indulging in an immoral trafficking in the limits of Cyberabad Police Commissionerate. The order of the 2nd respondent dated 09.11.2018, is approved by the 1st respondent vide G.O.Rt.No.2521 dated 19.11.2018.

3. Counter-affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the Writ Petition and justified the reasons for passing detention order against detenu.

4. Heard Smt.B.Mohana Reddy, learned Counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

5. Learned Counsel for the petitioner submits that neither the detention order nor the grounds of detention were served on the detenu or on the petitioner, who is the brother of the detenu, though

a request was made to the Advisory Board to direct the police to serve papers on the detenu. She also submits that after arrest the detenu was tortured very badly by respondents 5 to 7 in the first week of November 2018, he was suffering with severe pain in right knee, right ankle and lower back, he is not in a position to sleep, sit and stand and his condition is very bad because of the ill-treatment of the respondent police and Prisons Department. Basing on the pleadings in the Writ Affidavit, she also submits that the outpatient ward record issued by the NIMS reflects that the Orthopedic Department examined the detenu on 13.11.2018 and written in the clinical prescription that the detenu was hit by the police and thereby he sustained injuries to his knee, ankle and lower back and the doctor also gave preliminary treatment and asked for a review on 16.11.2018 and also advised not to walk or climb stairs until advised otherwise. The said record also reflects that the detenu was taken to the jail due to official reasons. Thereafter, the detenu came to know that Preventive Detention Act was invoked against him on 09.11.2018 basing on the registration of Crime No.825 of 2018 by the Police of Madhapur Police Station, Cyberabad Commissionerate and that it was issued only to cover the skin of the police for the ill-treatment and torture done by them while the detenu was in custody. She also submits that basing on a single crime i.e., Crime No.825 of 2018 only, the detention order was passed, whereas the detention order reveals that it was passed based on the several cases registered against the detenu and he is continuing to indulge in

similar offences, which goes to show the non-application of mind on the part of the detaining authority. She further submits that there is no material before the detaining authority to show that the activities of the detenu in immoral trafficking are prejudicial to the maintenance of public order and public health.

6. On the other hand, the learned Government Pleader for Home appearing on behalf of the respondents submits that the detenu refused to receive the detention order and other relevant papers in the presence of the Jailor for the reasons best known to him and to that effect a certificate was also issued by the Jailor and, therefore, the papers were sent to the address of the detenu by registered post. He further submits that detention order can be passed basing on a single crime or even without registration of any crime. He also submits that the detenu was arrested in connection with Crime No.825 of 2018 of Madhapur Police Station on 08.10.2018 and was produced before the Magistrate on 09.10.2018 duly examining him by the Government Doctor and was remanded to judicial custody and, therefore, there is no ill-treatment whatsoever as alleged by the petitioner.

7. We have carefully considered the pleadings of the parties, all the relevant materials and rival contentions. In this case, it is to be seen in the writ affidavit, wherein it is stated that initially the detenu refused to receive the detention order and other relevant papers due to fear and thereafter he requested the Advisory Board to direct the police to serve papers on him. However, no papers are served on

the detenu till date. The said allegation has been denied in the counter-affidavit. Regarding the contention of the learned Counsel for the petitioner that detention order was passed based on a single crime, it is to be seen that detention order is not dependent upon initiation of prosecution as held by the Supreme Court in **Haradhan Saha v. The State of West Bengal**¹. In view of the same, it cannot be said that the detention order gets vitiated only because it is passed based on registration of a single crime. But the fact of the matter in the present case is, admittedly the detention order was issued based on a single crime i.e., Crime No.825 of 2018 on the file of Madhapur Police Station. But in the grounds of detention order, it is mentioned that **cases** registered against the detenu have not shown any deterrent effect on him so far and the detenu has continued to indulge in **similar offences** in public places, which are detrimental to the public health at large. From this, it is clear that the 2nd respondent is under the impression that there is more than one case registered against the detenu, which goes to show that there is no proper application of mind before arriving at subjective satisfaction in passing the detention order against the detenu.

8. In this case, though it is not a relevant ground for invalidating the detention order, the fact remains that in Crime No.825 of 2018 which is relied on by the 2nd respondent for passing the detention order, no charge sheet is filed. As a result, the detenu was enlarged on bail after expiry of statutory period vide CrI.M.P.No.509 of 2019

¹ (1975) 3 SCC 198

dated 05.02.2019, which goes to show that the Investigating authority is not serious in investigating the crime and filing the charge sheet.

9. With regard to the allegation that the detenu has been tortured while he was in police custody or in custody on the basis of a remand order, this Court has called for a report and after hearing both sides, this Court is of the opinion to leave the said aspect open and it is for the detenu to agitate the same before the competent Court.

10. For the above mentioned reasons, the impugned detention order passed by respondent No.2 and approved by respondent No.1 cannot be sustained and the same is accordingly set aside.

11. The Writ Petition is, accordingly, allowed. The detenu shall be set at liberty forthwith, if he is not required in any other crime or case. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

THOTTATHIL B.RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

12th February, 2019
Gsn.

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12-02-2019