

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

WRIT PETITION NO.2156 OF 2019

ORDER: (Per Hon'ble Sri Justice T.Amarnath Goud)

The petitioner has challenged the detention order dated 22.05.2018, passed by the Collector & District Magistrate, Sanga Reddy, Sanga Reddy District, and the conformation order dated 09.07.2018, passed by Principal Secretary, General Administration Department, the respondent No. 1, before this Court. By the first order, the Collector & District Magistrate had directed that the petitioner's wife, Akshinthala @ Akula Sandhya @ Divya, should be detained under Section 3 (2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers Act, 1986 (for short, "the Act"); by the second order, the respondent No. 1 had confirmed the detention of the *detenue*.

Briefly stated, the facts of the case are that it is alleged that the *detenue* was indulging in theft of gold ornaments from women folk travelling in Road Transport Corporation buses and sharing autos including by diverting attention in the limits of Sangareddy District thereby creating large-scale fear and panic among the people adversely affecting the maintenance of public order. Hence, she is a "Goonda" as defined under the Act. It is further alleged that since 2015, she was involved in as many as ten cases that were registered against her under Chapter-XVII of IPC, namely in i) Cr. No. 182/2015 under Section 379 IPC of Bibinagar Police Station of

Rachakonda Police Commissionerate; ii) Cr. No. 570 of 2016 under Section 379 IPC; iii) Cr. No. 606 of 2016, under Section 379 IPC; iv) Cr. No. 51 of 2017, under Section 379 IPC of Kukatpally Police Station of Cyberabad Police Commissionerate; v) Cr. No. 304 of 2017, under Section 379 IPC; vi) Cr. No. 414 of 2017, under Section 379 IPC; vii) Cr. No. 170 of 2018, under Section 379 IPC of Patancheru Police Station; viii) Cr. No. 50 of 2018, under Section 379 and 420 IPC of Koheer Police Station; ix) Cr. No. 43 of 2018, under Section 379 IPC; and x) Cr. No. 46 of 2018, under Section 379 IPC of Hathnoora Police Station of Sangareddy District.

Further according to the petitioner, the detention order was passed treating the petitioner's wife as a "Goonda" basing upon the four crimes, namely i) Cr. No. 43 of 2018; ii) Cr. No. 46 of 2018; iii) Cr. No. 50 of 2018; and iv) Cr. No. 170 of 2018. It is alleged that the incidents covered by those crimes are created and fictitious since all the complainants therein made the complaint against the unknown persons. Thus, the detaining authority had taken into consideration the irrelevant grounds for passing the impugned order. Hence, the order of detention is vitiated.

According to the petitioner, the *detenue* made a representation to the respondent No.1 on 05.08.2018 and also to the respondent No.2 on 06.09.2018 requesting to revoke the order of detention. But, so far, the said representations have not been disposed of. Such an undue delay vitiates the fundamental right guaranteed to the *detenue* under Articles 21 and 22 of the

Constitution of India. It is alleged that the *detenue* was denied of her right to submit effective representation to the competent authorities. For, the documents relied upon by the detaining authority for detaining the *detenue* were not properly supplied to the *detenue*. From 24.02.2018 onwards, the *detenue* has been in judicial custody without there being any enquiry by the Advisory Board.

Smt. T. Siva Parvathi, the learned counsel for the petitioner, has raised the following pleas: -

Firstly, although the detention order dated 22.05.2018 mentions the previous criminal cases in which the *detenue* was allegedly involved, the relevant papers dealing with the said criminal cases, mentioned hereinabove, were not supplied to the *detenue*. Thus, the *detenue* was denied the opportunity of making an effective representation to the Government under Section 8 of the Act.

Secondly, since the *detenue* was already arrested in Crime Nos. 43 of 2018 and 46 of 2018 on the file of Hathnoora Police Station, since she was already in judicial custody, there was no necessity to pass the preventive detention order against the *detenue*.

Thirdly, even if the *detenue* had applied for a bail, even then "compelling reasons" have to be given by the detaining authority for

passing the detention order. However, no such "compelling reasons" have been mentioned in the impugned detention order.

Fourthly, the only reason given for passing the detention order, while the *detenue* was in judicial custody, is an apprehension that she may be released on bail by the learned trial court. However, such an apprehension is highly misplaced. Therefore, the preventive detention order is based on unfounded apprehension.

On the other hand, the learned Advocate General has raised the following counter-arguments:-

Firstly, since the previous criminal activities, in the form of the criminal cases pending against the *detenue* from 2015 till 2018, have been mentioned only as "a reference" to indicate her criminal history. Since these cases do not form the basis for the detention, there is no need to supply the relevant papers of the said cases to the *detenue*. Moreover, since the *detenue* is the alleged accused in these cases, the *detenue* is well aware of the existence and the outcome, if any, of these cases. Hence, no prejudice is caused to the *detenue* in case the relevant documents of the earlier criminal cases were not supplied to the *detenue*. Relying on the cases of **Powanammal v. State of Tamil Nadu**¹, and **E. Subbulakshmi v. State of Tamil Nadu**², the learned counsel has pleaded that a distinction has always been maintained between a document which has been relied upon by the detaining authority in the grounds of

¹ [(1999) 2 SCC 413

² (2017) 1 SCC 757

detention for preventively detaining the *detenue*, and the documents which find merely a reference in the grounds of detention. The non-supply of the relevant papers of the former category would be fatal to the detention order. But the non-supply of the relevant papers of the latter category would not vitiate the detention order. According to the learned counsel, the detention order, dated 22.05.2018 clearly reveals that the previous criminal cases in which the *detenue* was involved has been mentioned merely as a reference. These cases do not form the basis for passing of the detention order. In fact, the detention order has been passed on the basis of the latest criminal cases viz., Crime No. 43 of 2018; Crime No. 46 of 2018; Crime No.50 of 2018; and Crime No.170 of 2018. Hence there was no need to furnish the relevant documents of the previous criminal cases recorded against the *detenue*. Thus, the non-supply of the relevant papers of those criminal cases would not adversely affect the legality of the detention order.

Secondly, there is clear-cut distinction between preventive detention and a punitive one. Preventive detention is based on the previous conduct of a person, and is based on a suspicion that if the person were not prevented from continuing his/her illegal activities, then he/she is likely to continue to do so. Moreover preventive detention order is passed when the detaining authority comes to a subjective satisfaction that the alleged illegal acts have become a menace to the society at large. Hence the case has graduated from "law and order problem" to a "public order"

problem. In the present case, the *detenue* was already involved in ten different criminal cases under Chapter XVII of IPC between 2015 to 2018. All these cases related to theft of gold ornaments from the women folk. Therefore, the detaining authority was well justified in entertaining a *bona fide* apprehension that not only the *detenue* may be granted bail, but she would also continue to indulge in cases of theft of gold ornaments. Therefore, the detaining authority is legally justified in passing the detention order, even while the *detenue* was confined in judicial custody.

Lastly, that neither the detention order passed by the detaining authority, nor the confirmation order passed by the respondent No.1, suffer from non-application of mind. In fact, those impugned orders have been passed after holistically considering the criminal track record of the *detenue*. Since the illegal activities of the *detenue* had become a menace to the public at large, since her acts had begun to disturb the public order, the impugned orders are legally justified. Hence, the learned Government Pleader has supported the impugned orders.

Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, perused the impugned orders, and examined the record available with the court.

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 so in future. The basis for passing the detention order is the satisfaction of the Executive of a

reasonable probability of the *detenu* acting in a manner similar to his past acts and preventing him/her by detention from so doing in near future attracting the provisions of the Act. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his/her past conduct judged in the light of surrounding circumstance, and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law. And, if so, whether it is necessary to detain him/her with a view to prevent him/her from so acting.

It is to be noted that the offences which are alleged to have been committed by the *detenu*, against whom the cases have been registered, can be effectively dealt with under the ordinary law. As seen from the record, the detaining authority has failed to draw the distinction between the “endanger to the public order” and “violation of law and order”, and the detaining authority did not indicate any cogent reason in the detention order for invoking the draconian law, which has to be exclusively dealt with rarest of the rare cases in which the national security and the public order is at stake.

On the other hand, the rights envisaged upon the *detenue* under Articles 21 and 22 of the Constitution of India cannot be ignored. Further, Article 21 of the Constitution of India is considered to be "the heart and soul of the Constitution of India" as

it contains the word "personal liberty". Therefore, the ideal of Liberty runs through the Constitution of India like a golden thread.

However, like any other fundamental right, "liberty" is not an unruly horse. It can be cribbed, cabined, and confined by a procedure established by law. Article 22 of the Constitution of India permits preventive detention of individuals who are likely to disturb public order, thereby endangering the life and liberties of others. In catena of cases the Hon'ble Supreme Court has emphasised that while dealing with a case of preventive detention, the courts are required to delicately balance the interests and the rights of the *detenue* to be at liberty, with the interests and rights of the society at large to ensure that his liberty is curtailed and confined. In order to balance these conflicting interests, the Apex Court has stressed that while preventive detention may be permissible under the law, but the detaining authority must exercise its powers carefully, meticulously, and strictly in accordance with law. For, the draconian power of preventive detention cannot be used lightly in order to violate the liberty of an individual. After all, the individual is pitched against the colossal power of the State. Therefore, according to the Hon'ble Supreme Court, while the satisfaction to preventively detain a person may be subjective in nature, but nonetheless the procedures prescribed by the law and as interpreted by the Hon'ble Supreme Court have to be followed zealously. If the procedure is ignored, or violated by the detaining authority, such action or omission may either vitiate the

detention order, or render the continued detention of the *detenue* an illegal one.

In **V.Shantha Vs. State of Telangana**³, the Apex Court held that *“an order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen under Articles 14, 19, 21 and 22 of the Constitution. The power being statutory in nature, its exercise has to be within the limitations of the statute, and must be exercised for the purpose the power is conferred. If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials, it will stand vitiated as being in colourable exercise of power”*. In the said case, the Apex Court set aside the detention order, having found the same as extraneous to the Act.

In the present case, though the detaining authority expressed satisfaction in the detention order, the same is not sufficient to pass the impugned order. Apart from the same, when there is specific statute to deal with the offences alleged to have been committed by the *detenu*, invoking the draconian law of detention is unwarranted.

It is to be noted that nothing prevented the prosecution in opposing the bail application before the trial Court. In the event if the bail is granted, and still the prosecution feels that there is

³ (2017) 14 SCC 577

possibility of the accused in committing the offences repeatedly, which would be threat to the peace and tranquility of the society at large, the prosecution can always move an appropriate application seeking cancellation of the bail before the trial Court. If the authority concerned makes an order of detention under the Act and also prosecutes him/her in criminal case on self-same facts, the detaining authority cannot take recourse to two parallel and simultaneous proceedings, nor can take re-course to a ground which is the subject matter of a criminal trial. Therefore, the action of the detaining authority in invoking the draconian law to jeopardize the constitutional rights of the *detenue* is unwarranted and unjust.

For the reasons stated above, the Writ Petition is allowed. The impugned orders dated 22.05.2018 and dated 09.07.2018 are hereby set aside. Although the preventive detention orders have been set aside, since the *detenue*, Akshinthala @ Akula Sandhya @ Divya, has not been granted bail, she shall continue to be in the custody of the jail, but as an under-trial, till proper orders for her release, if any, are passed through a bail order. The miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, J

T. AMARNATH GOUD, J

Date: 29.03.2019
TJMR