

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29772 OF 2018

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

This Writ Petition is filed challenging detention order against the husband of the petitioner i.e., detenu, vide proceedings No.SB(I) No.41/PD-1/HYD/2018, dated 10.05.2018 passed by the 3rd respondent, which was confirmed by the 1st respondent vide G.O.Rt.No.1266 General Administration (Spl.(Law & Order) Department, dated 02.07.2018 under Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986) (for short 'the Act of 1986') detaining him for a period of 12 (twelve) months from the date of detenu's detention i.e., 12.05.2018.

2. The petitioner is the wife of the detenu. Since the detenu was involved in several offences, the detaining authority i.e., 3rd respondent-Commissioner of Police, after having satisfied with the material placed before him, passed detention order on 10.05.2018 holding the detenu to be a 'goonda' noticing his involvement in several criminal cases including detention order passed in the year 2014. The State Government-1st respondent, after considering the report and opinion of the Advisory Board, confirmed the order of 3rd respondent vide order dated 02.07.2018.

Aggrieved by the decision of the State Government, the petitioner herein filed the present habeas corpus petition before this Court.

3. Counter affidavit is filed by the 3rd respondent justifying the order of detention by reiterating the contents of impugned order and also relied on judgments.

4. We have heard Sri N.Indrasena Reddy, learned counsel for the petitioner and learned Government Pleader for Home appearing for respondents.

5. Learned counsel for the petitioner after taking us through the detention order dated 10.05.2018, which is confirmed by the 1st respondent-State Government, submitted that the detaining authority has not made out a case for preventive detention of the detenu and that it does not mention the period of detention. He submitted that there is no material for passing detention order by the detaining authority. He submitted that the detenu is not the prime accused in the crimes registered against him, which are the basis for passing the impugned detention order. He also submitted that the detenu is not visible in CCTV footage at the time of offence in the alleged crimes and that there is no valid material for arriving at subjective satisfaction by the 3rd respondent to detain the detenu. He further submitted that the detenu was implicated in 3 (three) cases, which are registered against the detenu, after passing of detention order and that he has not committed any offence. He further submitted that the criminal cases relied on by the detaining authority are stale and there is no ground for invoking the provisions of the Act of 1986. He further submitted that

no opportunity of hearing was provided either to the petitioner or to the detenu before passing the impugned detention order and that initiation of impugned proceedings by way of detention order is nothing but abuse of process of law. Finally, he submitted that there is no application of mind on the part of the 3rd respondent in passing the impugned proceedings. He submitted that when the bail petitions filed by the petitioner were dismissed, the conclusion of the 3rd respondent that if the detenu released from bail, there is imminent possibility of his committing similar offences, which are detrimental to public order, shows the non-application of the mind by the detaining authority.

6. On the other hand, learned Government Pleader for Home appearing for respondents while taking us through the grounds of detention, submitted that the detenu involved in three cases which are serious in nature and he is a habitual offender. He further submitted that he has been committing offences, which are creating fear and panic among the general public and that the detenu is acting in a manner prejudicial to the public order, as such, the 3rd respondent, considering the gravity and nature of offences committed by the detenu, rightly passed order of detention on 10.05.2018 and same is confirmed by the 1st respondent vide orders dated 02.07.2018. He submitted that since the detenu committed 3 offences in a short span of time in a year i.e., 2018, which are serious in nature, basing on the same, subjective satisfaction arrived at by the detaining authority cannot be interfered with and no interference is called for.

7. Before considering the rival contentions of both parties, it is relevant to refer the definition of 'Goonda' as described in the Act of 1986.

“Section 2(g): “Goonda” means ‘a person, who either by himself or as a member of or leader of gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.”

8. The Act of 1986 was enacted by the State in order to prevent certain persons from dangerous activities which are prejudicial to the maintenance of public order.

9. We have carefully considered all the relevant materials and considered rival contentions. With regard to the first submission that no case is made out by the detaining authority for preventive detention of detenu by invoking the provisions of the Act of 1986 and that no period of detention is mentioned in the detention order, is contrary to the facts and equally untenable in view of the material placed before us. A perusal of the impugned detention order dated 10.05.2018 passed by the 3rd respondent, which is confirmed by the 1st respondent vide proceedings G.O.Rt.No.1266, General Administration (Spl.(Law & Order), Department, dated 02.07.2018 goes to show that detention of detenu is for a period of 12 months from the date of detention i.e., 12.05.2018, as such the contention of the learned counsel for the petitioner that there is no mention of period of detention, is not correct.

10. With regard to second submission by learned counsel for the petitioner that there is no material to arrive at subjective satisfaction by the

3rd respondent to pass order of detention, as such, the same is liable to be set aside.

11. In this regard, it is relevant to peruse the detention order passed by the 3rd respondent dated 10.05.2018 which goes to show that the detenu i.e., Mohammed Firdous @ Shooter Firdous @ Firdous, before passing of the impugned order dated 02.07.2018, involved in many offences including murder, rioting, hurt cases using dangerous weapons, criminal intimidation etc., in the limits of Hyderabad Police Commissionerate and he was detained under the Act of 1986 vide order SB(I) No.138/PD/S-1/2014, dated 30.09.2014 and subsequently, he was released from the jail after completion of 12 months in preventive detention. Subsequently, after release from earlier preventive detention, he committed 5 (five) offences in the limits of Hyderabad Police Commissionerate, which are as follows: 1) Cr.No.98/2016 under Section 324, 341, 427 IPC, Section 7(1) of Criminal Law Amendment Act, 1932; 2) Cr.No.70/2018 under Section 384 IPC; 3) Cr.No.25/2018 under Section 302, 307, 324 r/w 34 IPC, Section 27 of Arms Act of Humayunnagar PS; 4) Cr.NO.1159/2016 under Section 324 r/w 34 IPC; and 5) Cr.No.166/2018 under Section 384 IPC of Banjara Hills PS. The registration of above crimes clearly shows that the detenu is a habitual offender creating disturbance and tranquility in the society. It is useful to refer the grounds for passing detention order by the 3rd respondent, while considering the involvement of detenu in Cr.No.25/2018 under Section 302, 307, 324 r/w 34 IPC Section 27 of Arms Act of Humayunnagar PS, in his order dated 10.05.2018, which are as follows:

“When the complainant Sri Syed Saleemuddin tried to rescue them, the accused Mohammed Firdous attacked the complainant with an iron pipe causing injuries and all of them fled the scene. While leaving the scene of offence, the accused and his associates threatened the Sofa makers, Painters and others who witnessed the incident with dire consequences and while leaving, the accused Mohammed Firdous threw away the iron pipe which was used in this commission of offence at the spot. Both the injured were shifted to Virinchi Hospital for medical treatment, where the doctors declared Syed Sharfuddin as brought dead.”

12. Similarly, in Cr.No.70/2018 registered under Section 384 of IPC of Humayunnagar Police Station against detenu, the 3rd respondent stated as follows:

“The accused Mohammed Firdous @ Shooter Firdous @ Firdous, S/o. Late Mohammed Ghouse Mohiuddin, aged about 37 years, Occ: Catering Business, R/o.H.No.8-2-708/3, Khaja Nagar, 1st Lancer, Banjara Hills, Hyderabad has been sending his associates including Siraj Hussain to Universal Bakers and Cakes, situated at NMDC, Masabtank demanding rowdy mamools for the last six months. Due to fear, the complainant Sri Mujahid Ali Khan, S/o.Waris Ali Khan, age 48years, Occ: Manager, Universal Bakers and Cakes, R/o.H.No.10-4-13/11/A/1, Sanjay Gandhi Nagar, Masabtank, Hyderabad paid an amount of Rs.1500/- (Rs.500/- at each occasion) to the associates of the accused. About two months back, the accused Mohammad Firdous again sent his associate Siraj Hussain to the said bakery demanding to pay an amount of Rs.1500/- as rowdy mamool and out of fear the complainant paid Rs.1500/- to Siraj (associate of the accused). They threatened the complainant with the dire consequences not to report to the matter to the police. The accused was arrested on 08.02.2018 in Cr.No.25/2018 of Humayunnagar PS and remanded to judicial custody. On interrogation, he voluntarily confessed to have committed this offence also. His arrest was regularized in this case through PT warrant dated 22.3.2018.

Due to this incident the complainant and the management and co-employees of the bakery and people of different business establishments located in the vicinity of the scene of offence got panicky and scared to refuse to pay the rowdy mamools to the accused and his associates fearing physical harm, thereby adversely affecting the public order and leaving large section of people under the grip of fear and shock.”

13. In Cr.No.166/2018 under Section 384 IPC of Banjara Hills Police Station, the 3rd respondent observed as follows:

“Similarly, on 28.1.2018 at about 1630 hrs when the complainant Sri Syed Khaleel, S/o.Syed Ali, aged about 52 years, Occ: Business, R/o.H.No.8-2-708/2, Khajanagar, First Lancer, Masabtank, Hyderabad returned home. In the meantime, the

accused Firdous and his associate approached him and demanded an amount of Rs.2,000/- for organizing “Urs” at DArgah and threatened him with dire consequences if he did not pay the money. Out of fear the complainant paid an amount of Rs.1,000/- to the accused. Similarly, out of fear the complainant had paid amounts to the accused and his associates many times whenever they demanded. The accused also threatened Mullah Abdul Rawoof (neighbour of the complainant) many times demanding rowdy mamools. Out of fear of the accused, neither the complainant nor the locality people reported the matter to the police. The accused was arrested on 08.02.2018 in Cr.No.25/2018 of Humayunnagar PS and remanded to judicial custody.”

14. All the above facts goes to show that the detenu is a habitual offender and involved in the offences of murder, attempt to commit murder, extortions and creating panic among general public and also acting in a manner prejudicial to the maintenance of public order and as such, he is a ‘goonda’. It is not out of place to mention that the detenu was earlier detained for a period of 12 months by virtue of detention order dated 30.09.2014 and was released after completion of said period. The 3rd respondent also stated about the *modus operandi* of the detenu stating that he used demand rowdy mamools and if anybody refused to pay the same, he threatened with dire consequences of physical harm with deadly weapons. It is pertinent to note that, even after release, he had been committing offences frequently and that in the year 2018, he had committed offences in very quick succession. After taking all the aforesaid factors into consideration and after arriving at subject to satisfaction, the 3rd respondent passed order of detention order on 10.05.2018. The order of 3rd respondent further shows that there is a compelling necessity to detain him in order to prevent him indulging in such activities in future which are prejudicial to the maintenance of public order. Therefore, the contention of the learned counsel for the petitioner that there is no material against the

detenu for arriving at subjective satisfaction, is not correct. It is well settled law 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 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. (See **Subramanian v. State of Tamil Nadu**¹)

15. The next contention raised by the learned counsel for the petitioner that before passing the orders on 02.07.2018 by the 1st respondent, no opportunity was given to the petitioner and that the 1st respondent has not considered the material in proper perspective, before confirming the order of the 3rd respondent, as such, the same is against principles of natural justice and complete non-application of mind by the detaining authority.

¹ (2012) 4 Supreme Court Cases 699

16. In this regard, it is relevant to peruse the order passed by the 1st respondent vide G.O.Rt.No.1266, General Administration (Spl.(Law & Order), Department, dated 02.07.2018, which goes to show that the Advisory Board constituted under Section 9 of the Act, consisting of Hon'ble Justice Sri V.Bhaskara Rao, (Retired), Chairman and two other Members, reviewed the case of the detenu on 21.06.2018. The Advisory Board after having heard the detenu besides his mother Smt.Khuteja begum and wife Smt.Yasmeen Fatima and the Investigating Officers and duly perusing the grounds of detention and connected records and also after perusing the written representation of the detenu's wife, had submitted a report and opinion on 22.06.2018 stating that there sufficient cause for the detention of the Mohammed Firdous @ Shooter Firdous @ Firdous, S/o.Late Mohammed Ghouse Mohiuddin, aged about 37 years, Occ: Catering Business, R/o.H.No.8-2-708/3, Khajanagar, 1st Lancer, Banjara Hills, Hyderabad (Detenu No.1096). The detaining authority as well as the Advisory Board found that the detenu is a habitual offender and that if he is released on bail, there is every likelihood of his committing similar offences, which are detrimental to public order. Basing on the report and opinion of the Advisory Board along with the material placed before it, the 1st respondent, in exercise of powers conferred under sub-section (1) of Section 12 read with Section of the Act, confirmed the detention order passed by the 3rd respondent and directed to continue the detention of the detenu for a period of 12 (Twelve) months from the date of detenu's detention i.e., 12.05.2018. When the detaining authority has elaborately considered all the aspects while passing orders of detention on 10.05.2018

and same is confirmed by the 1st respondent vide orders dated 02.07.2018. Therefore, the contention of the learned counsel for the petitioner that there is no material for the subjective satisfaction of the 3rd respondent and also that no opportunity was offered to the detenu, before passing such order, does not merit consideration.

17. Learned counsel for the petitioner further submitted that since already the detenu was in judicial custody and further the bail petitions filed by him were also dismissed as on the date of passing of the detention order, as such, there is no likelihood of release of the detenu from the judicial custody, even then the 3rd respondent has not considered the said aspect and passed impugned detention order, which is illegal and arbitrary. In this regard, the 3rd respondent, in his order dated 10.05.2018, found that though the detenu moved two bail petitions and among them, one is pending for orders and another bail petition was dismissed. He apprehended that the detenu may also move bail petition in the remaining one case in which he is in judicial custody, as such, there is every likelihood of his release from jail on bail soon and on his release from jail, there is an imminent possibility of his committing similar offences, which are detrimental to public order, as such, he was prevented from doing so by passing impugned order of detention. Merely because the bail application in relation to a case was dismissed, it cannot be said that there is no likelihood of the detenu being released on bail on a subsequent bail application. (See **Nerella Prabha Latha v. Government of Telangana**²)

² 2018 (1) ALT (Crl) 413-416

In **Haradhan Saha v. The State of West Bengal**, the Hon'ble Supreme Court held as follows:

“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.”

In view of above facts and circumstances, we are not inclined to interfere with the order of detention passed by the 1st respondent, by exercising power of judicial review under Article 226 of the Constitution of India.

Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

5th February, 2019
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**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

P.D Judgment for Lordship's kind perusal
WRIT PETITION No.29772 OF 2018

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

Date: 5th February, 2019

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