

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.34648 OF 2018

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

This Writ Petition is filed assailing the proceedings in C.No. 38/PDC/KNR/2018, dated 19.6.2018 of respondent No. 2, whereby he has ordered the detention of one Malyala Devender @ Devaraju @ Raju, brother of the petitioner (for short, "the detenu"), which is confirmed by the 1st respondent vide G.O.Rt. No.1205, General Administration (Spl.(Law & Order) Department, dated 23.06.2018, as illegal and arbitrary.

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the detenu was falsely implicated in FIR Nos.244/2017, 245/2017, dated 31.07.2017 and FIR No.27/2018, dated 02.02.2018 along with 20 other theft cases for the offences punishable under Sections 380, 454 & 457 of IPC on the allegation that he committed theft of valuable articles by house breaking. The detenu was arrested on 18.05.2018 in Cr.No.244/2017 and remanded to judicial custody and that he was lodged in District Jail, Karimnagar. The bail applications filed by the detenu vide Crl.M.P.Nos.1115/2018 and 1116/2018 in Crime No.245/17 and 244/17 respectively before the Judicial First Class Magistrate (Excise) Karimnagar, were allowed on 13.06.2018, but his arrest was regularized on P.T warrants.

3. On 19.06.2018, the 2nd respondent-Commissioner of Police 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 and Land Grabbers Act, 1986 (for brevity, 'the Act of 1986') while holding the detenu to be a 'goonda' as defined under clause (g) of Section 2 of the Act of 1986, on the ground that the detenu had been indulging in a series of offences, such as burglaries by committing theft of gold and silver ornaments, net cash all worth Rs.8.5 lakhs in the limits of Police Commissionerate, Karimnagar. The order of the 2nd respondent dated 19.06.2018, is approved by the 1st respondent vide order dated 23.06.2018.

4. 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.

5. Heard Sri T.B.B.Krishna Mohan, learned counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

6. Learned counsel for the petitioner, while taking us through the detention order of the 2nd respondent dated 19.06.2018 and approval order passed by the 1st respondent vide G.O.Rt.No.1205, dated 23.06.2018, submitted that no case is made out against detenu for detaining authority to come to the subjective satisfaction for passing the detention order and that the case of detenu is not referred to the

Advisory Board by the 1st respondent as required under Section 10 of the Act of 1986. He submitted that the detention order was passed even without mentioning the period of detention, as such, the same is liable to be set aside. He further submitted that there is no opposition when the bail applications came up for hearing on 13.06.2018, which were allowed on same day, but the detention was order passed on 19.06.2018, stating that if the detenu is released on bail, there is every likelihood of indulging in similar activities detrimental to public order, which is illegal. He further submitted that the impugned detention order was passed basing on the crimes registered long back, which is illegal and arbitrary. In support of his contention, he relied on the judgment reported in **Sama Aruna v. State of Telangana**¹.

7. Per contra, learned Government Pleader for Home, opposing the above submissions of the learned counsel for the petitioner, submitted that the detenu is a habitual offender as evident from the fact that he is an accused in as many as 23 (twenty three) criminal cases under Sections 454, 457 and 380 of IPC and all the cases registered against him under Chapter XVII of IPC, as such, he is a 'Goonda' within the definition of Clause (g) of Section 2 of the Act of 1986. He submitted that three (3) House burglary offence cases in the police station limits of Karimnagar Police Commissionerate, were registered against the detenu during the year 2017 and 2018 and same had been considered as grounds of his detention and are prejudicial to maintenance of the public order. He submitted that the detaining

¹ 2017 Law Suit (SC) 557

authority had rightly considered material, *modus operandi* of the detenu in committing each crime and arrived at subjective satisfaction that the detenu is a habitual offender, passed the order of detention.

8. We have carefully considered all the relevant materials and rival contentions of both parties. A perusal of the impugned detention order dated 19.06.2018 passed by the 2nd respondent, which is approved by the 1st respondent vide proceedings G.O.Rt.No.1205, General Administration (Spl.(Law & Order), Department, dated 23.06.2018 goes to show that the detenu involved in Cr.Nos.244/2017 and 245/2017 both under Sections 454, 380 IPC of PS LMD Colony, Karimnagar, occurred on 30.10.2017 & 31.10.2017. The detenu along with his associate Neeli Ramesh @ Ramu also involved in Cr.No.27/2018 under Section 457, 380 IPC of Manakondur, Karimnagar Police Commissionerate occurred between 30.01.2018 and 02.02.2018. In the said case, the detenu and his associate were produced on PT warrants on 24.05.2018 and stolen ornaments were recovered from the possession of the detenu under the cover of confession panchanamas. The above incidents established the involvement of detenu in the crimes registered against him in quick succession would amply show that he is a habitual offender. The detaining authority, basing on the cogent material placed before it by sponsoring authority and after taking into consideration the involvement of detenu in committing similar type of offences, arrived at subjective satisfaction and passed order of detention. Therefore,

the argument that there is no material before detaining authority to come to the subjective satisfaction that the detenu is a 'goonda' within the meaning of Section 2(g) of the Act and that his activities are prejudicially effecting the maintenance of public order, within the meaning of Section 2(a) of the Act, is not tenable.

9. It is contended by the learned counsel for the petitioner that the case of detenu is not referred to Advisory Board by the 1st respondent. In the counter affidavit filed by the 2nd respondent, it is categorically stated that the 1st respondent referred the case of detenu to the Advisory Board, which in turn reviewed the detention order and submitted its report to the Government. Though it is stated that the Government upon considering the entire material, besides the report of the Advisory Board, confirmed the detention of the detenu for a period of 12 months, as per Section 12(1) r/w 13 of the Act of 1986 vide G.O.Rt.No.1715, General Administration (Spl.Law and Order) Department, dated 29.08.2018, no reply affidavit is filed by the petitioner rebutting the aforesaid contention of the 2nd respondent. In **Devaki v. Government of Tamil Nadu**², the Hon'ble Supreme Court held as follows:

"9. [Section 3\(3\)](#) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. [Section 8](#) requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. [Section 10](#) requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under [Section 3\(3\)](#) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms opinion, that there

² 1990 (2) SCC 456

was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in [Section_13](#) of the Act. [Section_13](#) provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time, it may think proper.

10. Provisions of the aforesaid Sections are inbuilt safe- guards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained can not exceed 12 months from the date of detention. [The Act](#) nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do. they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of [Section_3](#) relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The Legislature has taken care to entrust the power of detention to the State Government, as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed for a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in [Section_3\(2\)](#) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification."

In view of above settled law, non mentioning of period of detention in detention order, is not a ground to invalidate the detention order. As such, the contention of the learned counsel for the petitioner that the detention order is not referred to Advisory Board and not specified the period of detention of the detenu, is not correct.

10. With regard to another contention that the detenu does not fall within the definition of 'Goonda' as defined under Clause (g) of Section 2 of the Act of 1986, as such, impugned detention order cannot be sustained. A perusal of the grounds of detention show that since cases registered against the detenu under Sections 454, 457 and 380 IPC, are covered by the provisions of Chapter XVII IPC and that the detenu is a habitual offender. The 3rd respondent also stated about the *modus operandi* of the detenu in committing the alleged offences and also found that the detenu continued to commit the same offences, even

after releasing on bail and the detaining authority, having felt that the detenu is not amenable to ordinary law unless he is detained under preventive detention laws, passed the impugned detention orders. As such, the contention of the learned counsel for the petitioner that the detenu does not come under definition of 'goonda', cannot be accepted.

11. Though, it is contended by the learned counsel for the petitioner that the detention order was passed based on stale grounds. But, as already stated supra, the detenu committed similar type of offences i.e., theft by house breaking in quick succession i.e., on 30.01.2018 to 02.02.2018, basing on which, the impugned detention order was passed. That apart, it is well-settled law that in a case where the detenu was in judicial remand at the time of passing of the preventive detention order, the detaining authority must record his satisfaction that there is every likelihood of the detenu coming out of judicial custody and repeat the offences. Therefore, the contention of the learned counsel for the petitioner that the detention order was passed on stale grounds, basing on the cases registered long back and without application of mind, does not merit consideration. The order of 2nd 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. Though the learned counsel for the petitioner placed reliance on the judgment of Hon'ble Apex Court in **Sama Aruna v. State of Telangana**(supra), the principle of

law laid down therein is not applicable to the facts of the present case on hand. In the aforesaid decision, the detention order was based on the offences relating to the years 2002-2003, but in the case on hand, the detenu committed offences in quick succession, before passing detention order.

12. 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**³).

³ (2012) 4 Supreme Court Cases 699

13. The detaining authority has elaborately considered all the aspects while passing orders of detention on 19.06.2018, which is confirmed by the 1st respondent vide orders dated 23.06.2018. 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.

For the aforementioned reasons, the 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 dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

6th February, 2019
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P.D Judgment for Lordship's kind perusal

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

Date: 6th February, 2019

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