

**THE HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.34828 OF 2018

ORDER: (ORAL) (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

This Writ Petition is filed invoking Article 226 of the Constitution of India challenging the preventive detention order in Proc.No.C3/616/2018 dated 16.03.2018 issued by respondent No.2 under Section 3(1) & (2) read with Section 2(a) and (b) 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), as confirmed by respondent No.1 through G.O. Rt.No.849, General Administration (Spl. (Law & Order) Department, dated 03.05.2018, *in re* Shiva Patel, son of Balmik Patel. The preventive detention order dated 16.03.2018 was executed on the same day. That has been confirmed for a period of one year. That will end by 15.03.2019.

2. We have perused the material papers produced by the writ petitioner as well as the Government and have also perused the pleadings in the writ petition and those contained in the counter affidavit. We have heard learned counsel for the petitioner, who claims to be the uncle of the detenu. We have also heard the learned Government Pleader for Home (Telangana).

3. The learned counsel for the petitioner argued that the material papers supplied to the detenu along with the order of detention contained papers, which were not in Hindi, while it is the admitted position, as available from the records, that the detenu has knowledge of Hindi and scarce knowledge of English. The plea is that Hindi translation of the bail orders, which were in English, were not furnished to the detenu. The bail orders were issued by the Court by imposing conditions on the detenu. He was required, as per the bail orders, to appear before the Station House Officer on every Sunday between 11.00 a.m. and 1.00 p.m. That order was issued by the Court where excise offences are considered. It is argued that the existence of such a condition and the insufficiency of such condition to exclude the detenu from engaging in prejudicial activities, which would fall under the Act, have not been considered and no subjective satisfaction has been arrived at by the detaining authority on that issue. It is further argued on the strength of the decisions of this Court in **I. Dhanalaxmi v. State of Telangana**¹ and **Md. Naseem v. State of Telangana** (W.P. No.32398 of 2018 dated 09.11.2018 - unreported) that the question whether the activity attributed to the detenu is merely one that would fall under the Excise Laws or one, which could be treated as an activity, which if permitted, would endanger life; to attract the provisions of the preventive detention law has not been considered by the detaining authority and no subjective satisfaction on that issue has been recorded.

¹ 2017 (1) ALD CrI. 115

4. The learned Government Pleader argued that the bail orders were not materials, which were relied upon, but were only perused and, therefore, no prejudice is caused by the non-service of those documents on the detenu since those were not documents relied on for the purpose of preventive detention order. He also argued that the fact that there are bail orders and the conditions in the bail orders are obviously materials and matters within the knowledge of the detenu.

5. Even if the bail orders were not served on the detenu in a language known to him, the fact of the matter remains that the condition imposed through the bail orders that he should appear before the Station House Officer on every Sunday has not been noticed and considered by the detaining authority, to conclude that such condition is insufficient to ensure that the detenu does not involve himself in prejudicial activities and, therefore, he needs to be covered by an order for preventive detention. Subjective satisfaction in relation to that aspect is just not there in the detention order. For this single reason, we are satisfied that the continued detention of the detenu will violate the constitutional provisions and the statutory provisions of the Act.

6. In the result, the Writ Petition is allowed and the impugned preventive detention order in proceedings No.C3/616/2018 dated 16.03.2018 of respondent No.2, as confirmed by respondent No.1 *vide* G.O.Rt.No.849, General Administration (Spl. (Law & Order) Department, dated 03-05-2018, is quashed. The *detenu* viz.,

Shiva Patel, son of Balmik Patel, shall be set at liberty forthwith from the detention, if he is not required in connection with any other case(s).

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

January 30, 2019.

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