

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.37175 OF 2018

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

This Writ Petition is filed assailing the proceedings in C.No. 41/PDC/KNR/2018, dated 04.07.2018 of respondent No. 2, whereby he has ordered the detention of one Renukuntla Thirupathi, under Section 3(2) of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act of 1986'), who is the brother of the petitioner (for short, "the detenue"), which is confirmed by the 1st respondent vide G.O.Rt.No.1907, General Administration (Spl.(Law & Order) Department, dated 20.09.2018, 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 detenue was falsely implicated in

- 1) Cr.No.174/2017 under Section 457, 380 IPC of PS Choppadandi;
- 2) Cr.No.81/2018 under Section 454, 380 IPC of PS Karimnagar-I Town;
- 3) Cr.No.206/2018 under Section 380 IPC of PS Karimnagar-I Town;
- 4) Cr.No.96/2018 under Section 380 IPC of PS LMD Colony
- and 5) Cr.No.118/2018 under Section 380 IPC of PS Karimnagar Rural of Karimnagar Police Commissionerate, on the allegation that he committed theft of gold and silver articles by house breaking. The

detenue was arrested on 25.05.2018 in Cr.No.96/2018 and remanded to judicial custody and that he was lodged in District Jail, Karimnagar. Though the detenue was granted bail in two cases and no bail application is filed in remaining cases, his arrest was regularized on P.T warrants.

3. On 04.07.2018, the 2nd respondent-Commissioner of Police passed a detention order against detenue under Sub-Section (2) of Section 3 of the Act of 1986 while holding the detenue to be a 'goonda' as defined under clause (g) of Section 2 of the Act of 1986, on the ground that the detenue had been indulging in a series of offences, such as burglaries by committing theft of gold and silver ornaments, all worth Rs.1,69,000/- in the limits of Police Commissionerate, Karimnagar. The order of the 2nd respondent dated 04.07.2018, is approved by the 1st respondent vide G.O.Rt.No.1321, dated 10.07.2018 and that after receipt of report and opinion of the Advisory Board, the same was confirmed by the 1st respondent by G.O.Rt.No.1907, dated 20.09.2018.

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 detenue.

5. Heard Sri P.Prabhakar Reddy, 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 04.07.2018 and confirmation order passed by the 1st respondent vide G.O.Rt.No.1907, dated 20.09.2018, submitted that no case is made out against detenu for detaining authority to come to the subjective satisfaction for passing the detention order. He submitted that the detention order was passed even without mentioning the details of the cases registered against the detenu, as such, the same is liable to be set aside. He further submitted that the detenu was granted bail in two cases and he has not applied for bail in remaining cases, as such, there is no likelihood of indulging in similar activities detrimental to public order. He further submitted that the detenu is not a 'goonda' and that he was implicated basing on his confession and also that there is no independent evidence to connect the detenu in any of the cases. He further submitted that the order of detention is vague, stale and irrelevant and there is no nexus between one ground and another, as such, same is liable to be set aside. He submitted that though representation dated 08.08.2018 was submitted before the 1st respondent, the same was rejected on 20.09.2018, on which day confirmation order was passed, as such, there is an abnormal delay in considering the representation of the detenu, which is illegal and on this ground alone, the order of detention is liable to be set aside. In support of his contention, he relied on the judgment of Division Bench of this Court in W.P.No.37979 of 2018, dated 04.12.2018.

7. Resisting the above submissions, learned Government Pleader for Home, submitted that the detainee is a habitual offender engaging himself in unlawful activities and indulged in series of property offences such as house burglaries and home thefts, which is evident from the fact that he is an accused in four 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 five (5) House burglary offence cases in the police station limits of Karimnagar Police Commissionerate, were registered against the detainee 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 authority had rightly considered material, *modus operandi* of the detainee in committing each crime and arrived at subjective satisfaction that the detainee is a habitual offender, passed the order of detention. He submitted that the representation of the petitioner dated 03.08.2018 was forwarded to the Advisory Board on 08.08.2018 and after receipt of report and opinion from the Advisory Board, the 1st respondent passed confirmation order on 20.09.2018 and on the same day, the representation of the petitioner was dismissed holding that there is sufficient cause for the detention of the detainee, as such, there is no delay in considering the representation of the petitioner. In support of his contention, he relied on the judgments reported in **K.M.Abdulla Kunhi and B.L.Abdul Khader v. Union of India**¹,

¹ (1991) 1 Supreme Court Cases 476

D.M.Nagaraja v. Government of Karnataka² and B.Manjula v. The State of Telangana, rep. by its Chief Secretary, General Administration (Law and Order)³.

8. We have carefully considered the respective submissions of learned counsel for the parties and perused the material available on record.

9. Before considering the rival contentions of learned counsel, it is necessary to extract relevant provisions of the Act of 1986. Section 2(a) of the Act reads as follows:

“2(a) “*acting in any manner prejudicial to the maintenance of public order*” means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

Explanation: For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave of widespread danger to life or public health.

(b)

(c)

(d) “detention order” means an order made under Section 3;

(e) “detenue” means a person detained under a detention order;

2 (g) “goonda” means a person, who either by himself or as a member of or leader of a 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”

² (2011) 10 Supreme Court Cases 215

³ 2016 SCC Online Hyd 209; (2017) 1 ALD (Cri) 218

10. A perusal of the impugned detention order dated 04.07.2018 as well as the grounds of detention would clearly show that the detainee is a habitual offender, which is evident from the fact that he had committed as many as five offences during the years 2017 & 2018 in quick succession within the police station limits of Karimnagar Police Commissionerate and that Crime Nos.174/2017, 81/2018, 206/2018, 96/2018 and 118/2018 are registered against under Sections 454, 457 and 380 of IPC. The detainee was arrested on 25.05.2018 in Cr.No.96/2018 IPC of PS LMD Colony and recovered gold ornaments, crime vehicle i.e., Passion Pro Motor Bike bearing Reg.No.TS 01-EH-4505 from him under the cover of confession and recovery panchanama. The detaining authority has considered each crime registered against detainee, his *modus operandi* and linked the evidence against detainee to the crime, besides recovering gold and silver ornaments in his possession. In this context, the 2nd respondent-detaining authority, while linking the detainee to the crime, stated as follows:

“Basing on the CCTV footage collected from Sri Laxminarasimha Garden Function Hall you were identified. On 06.05.2018 while you were entering and coming out of bride’s room in the Function Hall, your visuals were recorded in CCTV, in which you were clearly identified.

On a requisition filed by the police, the Hon’ble Spl.JFCM, Karimnagar conducted TIP in District Jail, Karimnagar on 30.06.2018, in which the victim/complainant identified you. This evidence clearly established your involvement in this offence.”

The detainee in his confessional statement has admitted to have committed all these offences and based on his confessional statement, the stolen properties were recovered under the cover of panchanama.

Apart from that, he was captured in CCTV footage and identified by victims/complainants in Test Identification parade. The above incidents established the involvement of detinue in the crimes registered against him in quick succession would show that he is a habitual offender, involved in a series of burglaries and thefts. He used to select locked houses and commits burglaries by breaking open the door locks during day and also night times and committing theft of gold and silver ornaments and that the said incidents created a feeling of insecurity in the minds of public at large. The activities of detinue are prejudicial to the maintenance of public order and have been adversely affecting the maintenance of public order and peace in the locality. The detaining authority, basing on the cogent material placed before it by sponsoring authority and after taking into consideration the involvement of detinue in committing similar type of offences in quick succession, arrived at subjective satisfaction and passed order of detention. Therefore, the submissions of the learned counsel that there is no material before detaining authority to come to the subjective satisfaction that the detinue is a 'goonda' within the meaning of Section 2(g) of the Act, that no case details are mentioned in the detention order and also that his activities are not prejudicially affecting the maintenance of public order, within the meaning of Section 2(a) of the Act, are not tenable.

11. It is next contended by the learned counsel for the petitioner that even though the detinue was granted bail in two cases and he has not

moved any bail applications in remaining cases, the detaining authority, without considering the said fact, has passed the impugned detention order, which is illegal. In the detention order, the 2nd respondent has considered the filing of bail petitions by the detenu in Cr.Nos.174/2017 of PS Choppadandi and 96/2018 of PS LMD Colony vide CrI.M.P.Nos.1280/2018 and 1279/2018 dated 30.07.2018 on the file of Special Judicial First Class Magistrate Court, Karimnagar and orders passed therein. The 2nd respondent, after having satisfied that there is every likelihood of detenu moving bail petitions in the remaining cases and coming out on bail in due course, there is imminent possibility of his indulging in similar type of offences and that unless he is detained under preventive laws, with a view to prevent him from further indulging in such prejudicial activities in the interest of public at large, passed the impugned detention order. It is also found in the impugned detention order that the detenu was arrested on 25.05.2018 in Cr.No.96/2018 under Section 380 IPC of PS LMD Colony of Karimnagar Police Commissionerate and remanded to judicial custody and lodged in District Jail, Karimnagar and in the remaining cases, his arrest was regularized on P.T. Warrants. Even though the detenu was still in judicial custody in connection with the other crimes wherein no bail applications are moved, there is every possibility of him release on bail and further on being released, he would further indulge in activities which are prejudicial to the public order. 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.

b) In **B.Manjula Vs. State of Telangana (supra)**, Division Bench of this Court held as follows:

“ 22.Coming to the last submission, respondent No.2 has also clearly stated in the detention order as well as in the grounds of detention that there is a genuine possibility of her release on bail and on being released, she would further indulge in similar activities which are prejudicial to the maintenance of public order. In N. Meera Rani (8 supra), the Supreme Court summarized the settled legal principle in this regard as under: Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.”

In view of principle laid down in the above cases, it is for the 2nd respondent-detaining authority to reasonably satisfy himself that there is a likelihood of detenu acting in a manner prejudicial to the maintenance of public order, to pass detention order in order to prevent him from doing the same. Therefore, the contention of the learned counsel of the petitioner that the detaining authority has not considered

the fact of granting of bail in two crimes, and not filing of bail applications in remaining cases, as such, there is no likelihood of detenu coming out and indulge in similar offences, cannot be accepted.

12. Lastly, learned counsel for the petitioner submitted that there is an abnormal delay in considering the representation of the petitioner by the 1st respondent-Government before confirming the detention order passed by the 2nd respondent, as such, the impugned detention order is liable to be set aside on this ground alone. Opposing the above submission, the learned Government Pleader for Home submitted that the Constitutional safeguards provided to the detenu under Article 22 of the Constitution of India have been followed. It is stated in the affidavit that the representation was submitted to the 2nd respondent on 03.08.2018 after passing of detention order on 04.07.2018 and same was forwarded to the 1st respondent by the 2nd respondent on 08.08.2018. The 1st respondent accorded approval to the detention order dated 04.07.2018 passed by the 2nd respondent, vide G.O.Rt No.1321, General Administration (Spl.(Law & Order) Department, dated 10.07.2018. Thereafter, the Advisory Board constituted under Section 9 of the Act of 1986 reviewed the same on 16.08.2018 and after having heard the detenu besides his wife Smt.Rajamani, father Sri Banaiah and mother Pochakka 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 brother, submitted

report and opinion on 17.08.2018 to the 1st respondent. On 20.09.2018 i.e., within three months of the detention of the detainee, the detention order was confirmed by respondent No.1 and that immediately on the same day on which the detention order was confirmed, the detainee's representation, which was pending with respondent No.1, was considered and rejected without there being any delay. Even otherwise, there is no constitutional mandate or statutory requirement to consider the representation of the detainee before confirmation of the detention order by the Government. In **K.M.Abdulla Kunhi** (supra), the Constitutional Bench of Hon'ble Supreme Court held as follows:

“19. There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. As long as the government without delay considers the representation with an unbiased mind there is no basis for concluding that the absence of independent consideration is the obvious result if the representation is not considered before the confirmation of detention. Indeed, there is no justification for imposing this restriction on the power of the government. As observed earlier, the government's consideration of the representation is for a different purpose, namely, to find out whether the detention is in conformity with the power under the statute. This has been explained in *Haradhan Saha case* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778], where Ray, C.J., speaking for the Constitution Bench observed that the consideration of the representation by the government is only to ascertain whether the detention order is in conformity with the power under the law. There need not be a speaking order in disposing of such representation. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be real and proper consideration by the government.”

The aforesaid view was affirmed by the Hon'ble Supreme Court in **D.M.Nagaraja v. Government of Karnataka** (supra), wherein it is held as follows:

“22. Though the learned counsel for the appellant has not raised the objection i.e. delay in disposal of his representation, since that was the only contention before the High Court, we intend to deal with the

same. We have already stated that the detention order was passed on 22-9-2010 by the Commissioner of Police, Bangalore City. The said order was approved by the Government on 30-9-2010 and the case was sent to the Advisory Board on 8-10-2010 and the Board sat on 4-11-2010. The Government received the report of the Advisory Board on 10-11-2010. Confirmation detaining the detenu for a period of 12 months was issued on 16-11-2010. Representation of the detenu through the Central Prison was sent on 6-10-2010 i.e. before passing of the confirmation order by the Government.”

“23. This Court in *K.M. Abdulla Kunhi v. Union of India* [(1991) 1 SCC 476 : 1991 SCC (Cri) 613 (Constitution Bench)] has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and as such, the contention raised by the appellant as if there was delay in consideration, is baseless and liable to be rejected. As pointed out above, the counsel for the appellant did not raise any objection as regards to the same.”

In *B.Manjula v. The State of Telangana* (*supra*), Division Bench of this Court, while considering similar issue, after following the law laid down in the aforesaid authoritative pronouncements of Hon’ble Supreme Court, held as follows:

“13. From the above-mentioned authoritative judicial pronouncements, the law is well settled that a detenu has no constitutional right to insist that his representation must be considered before confirming the detention order. The outer time limit prescribed for such confirmation is three months from the date of order of detention under Article 22(4) of the Constitution of India. Therefore, if a detention order was confirmed within the outer time limit prescribed by the Constitution and the representation against the detention is considered within a reasonable time of confirmation of the detention order, the requirement under Article 22 stands satisfied and the detention order cannot be interfered on the ground of delay in considering the representation of the detenu.”

13. In the instant case, admittedly, the detention order passed by the 2nd respondent on 04.07.2018 was confirmed by the 1st respondent on 20.09.2018 and admittedly, the representation of the petitioner dated 03.08.2018 was rejected on 20.09.2018, i.e., on the date of

confirmation of detention order, which well within the prescribed limit by the Constitution i.e., three months from the date of passing of detention order. There is no constitutional obligation on the part of the detaining authority to consider the representation of the detenue before the detention order was confirmed and that as the representation of the detenue was considered and rejected on the same day on which the detention order was confirmed, there is no delay as pleaded by the detenue. If the representation of the petitioner was considered and rejected on the same day when the confirmation order was passed by the 1st respondent, the same cannot invalidate the detention order passed by the 2nd respondent.

14. Though, learned counsel for the petitioner placed reliance in the Division Bench Judgment of this Court in WP No.37979 of 2018, dated 04.12.2018, the facts in the aforesaid judgment and in the present case are distinguishable. In the above case, the detention order was passed on 19.06.2018 and the same was confirmation order was 14.07.2018 and on the same day, the detenu made representation to the Government, which was rejected on 23.08.2018. In the instant case, the representation of the petitioner was rejected on the day when the detention order was confirmed by the 1st respondent on 20.09.2018. As already supra, there is no constitutional mandate or statutory requirement to consider the representation of the petitioner before confirmation of the detention order. As such, there is no delay muchless abnormal delay as contended by the learned counsel for the

petitioner. Therefore, the judgment relied on by the learned counsel for the petitioner has no application to the facts of the present case on hand.

15. 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 detenue committed similar type of offences i.e., theft by house breaking in quick succession for the years 2017 and 2018, basing on which, the impugned detention order was passed. Therefore, the contention of the learned counsel for the petitioner that the detention order was passed on stale grounds, 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.

16. 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**⁴).

17. The detaining authority has elaborately considered all the aspects while passing orders of detention on 04.07.2018, which is confirmed by the 1st respondent vide orders dated 20.09.2018.

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

26th February, 2019
kvs

⁴ (2012) 4 Supreme Court Cases 699

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

P.D Judgment for Lordship's kind perusal

WRIT PETITION No.37175 OF 2018

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

Date: February, 2019

kvs

