

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

WRIT PETITION NO.37293 OF 2018

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

This writ petition is filed seeking issuance of a Writ of Habeas Corpus directing the respondents to forthwith produce the *detenu*, Shetty Vijay, before this Court and declare the detention order issued by the second respondent vide proceedings C.No.01/PD CELL/CCRB-RGM/2018, dated 30.06.2018, which was confirmed by the first respondent vide G.O.Rt.No.1910, General Administration (Spl. (Law & Order) Department, dated 20.09.2018, as illegal and unconstitutional.

The order of preventive detention dated 30.06.2018 passed by the second respondent, in exercise of power under Section 3 of the Act was approved by the Government of Telangana, vide G.O.Rt.No.1910, General Administration (Spl. (Law & Order) Department, dated 20.09.2018. Thereafter, upon consideration of the report submitted by the Advisory Board, constituted under Section 9 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and

White Collar or Financial Offenders Act, 1986 (for short, “the Act”), the Government of Telangana confirmed the detention of the *detenu* for a period of 12 months from 04.07.2018, *vide* G.O.Rt.No.1910, dated 20.09.2018.

The grounds for detention appended to the order of detention dated 30.06.2018 reflect that the *detenu*, Shetty Vijay, has gained wrongful entry into the houses of victims by various means like breaking open the locks of the doors or otherwise and committed theft of gold, silver ornaments and cash in the Police Station limits of Khammam and Commissionerate limits of Ramagundam. The detaining authority has relied on five offences, which were registered against the *detenu* under various offences under the provisions of Chapter XVI/XVII/XXII of IPC, as such the activities of the individual fall under and within the meaning of the Act. All the incidents mentioned in the grounds of detention clearly substantiate as to how the acts of the *detenu* are prejudicial to the maintenance of public order. The detaining authority having satisfied that the activities of the *detenu* created a sense of fear, panic and insecurity in the minds of the public and prejudicial to maintenance of public order and having felt that launching of prosecution against the *detenu*, would not have the desired effect in preventing the *detenu* from acting in any manner prejudicial to the maintenance of public order. It is further alleged that he was involved in as many as five criminal cases that were registered against him, namely in i) Crime No.120/2017 under Sections 457

and 380 IPC; ii) Crime No.164/2017, under Sections 457 and 380 IPC of Mancherial Town Police Station; iii) Crime No.138/2017, under Sections 457 and 380 IPC of P.S., CCC, Naspur; iv) Crime No.02/2018, under Sections 457 and 380 IPC; and v) Crime No.91/2018 under Sections 457 and 380 IPC of Mancherial Town Police Station.

The *detenu* was given a right to make a representation against his detention, to the detaining authority, the Advisory Board and also the Government of Telanagana. The Advisory Board, after having heard the *detenu* besides his wife Shetty Laxmi, the investigating officers, after duly perusing the grounds of detention, connected records and the written representations of the *detenu*, opined that “there is sufficient cause for the detention of the *detenu*-Shetty Vijay”.

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 *detenu* 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 *detenu* 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 *detenu* an illegal one.

In **V.Shantha Vs. State of Telangana**¹, 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 possibility of the accused in committing the offences repeatedly, which would be threat to the peace and tranquility of the society at

¹ (2017) 14 SCC 577

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 *detenu* is unwarranted and unjust.

For the reasons stated above, this Writ Petition is, hereby, allowed. The order dated 30.06.2018 passed by the Commissioner of Police, Ramagundam, vide C.No.01/PDCELL/CCRB-RGM/2018 passed by the respondent No.2, is quashed and set aside.

The *detenu*, namely Shetty Vijay, S/o. Devender, who is being preventively detained in the Central Jail, Warangal, shall be set at liberty forthwith. The miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 28.03.2019
TJMR