

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.37867 OF 2018

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

This Writ Petition is filed challenging the impugned detention order No.14/PD/CCRB/CYB/2018, dated 09.05.2018 passed by the 2nd respondent, which is confirmed by the Advisory Board by G.O.Rt.NO.1302, dated 07.07.2018 as illegal and arbitrary and consequently to quash the same.

2. The sum and substance of the averments in the affidavit filed in support of the Writ Petition is that the petitioner is the wife of R.Rakesh (for short 'detenu'). The 2nd respondent passed impugned detention order dated 09.05.2018 basing on the four criminal cases registered against detenu i.e., 1)Cr.No.64/2018 under Section 392 IPC, dated 02.02.2018, 2)Cr.No.159/2018 under Section 392 IPC, dated 07.02.2018, 3) Cr.No.71/2018, under Section 392 IPC, dated 20.02.2018 and 4) Cr.No.39/2018, under Section 307, 392, 120-B 341 IPC and Sections 25 & 27 of Arms Act, dated 11.03.2018. The detaining authority passed the impugned detention order without application of mind, which is confirmed by the Government by its order dated 07.07.2018, without appreciating the material on record, which is in violation of Article 21 of the Constitution of India. The detaining authority failed to explain as to how the detenu is causing

harm, panic feeling of insecurity among the innocent general public without there being any material on record. That out of four cases, in one case, the court below has acquitted the detenu and in remaining three cases, there is every chance of acquittal, as such, the detention order passed by the 2nd respondent is liable to be set aside.

3. 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.

4. Heard Sri V.Raghunath, learned counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

5. Learned counsel for the petitioner, while taking us through the detention order of the 2nd respondent dated 09.05.2018 and confirmation order passed by the Government vide G.O.Rt.No.1302, dated 07.07.2018, 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 with malafide intention as the detenu questioned the acts of police and their illegal activities, as such, the same is liable to be set aside. He further submitted that the detention order is contrary to several judgments of Hon'ble Supreme Court.

6. 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 four criminal cases are registered against the detenu in short span

of one month involving in robberies, criminal conspiracy and attempt to murder by using unauthorized weapons illegally, as such, his activities are prejudicial to the maintenance of public order. He submits that the after report and opinion of the Advisory Board, basing on the material placed by the sponsoring authority and also with due application of mind to the relevant facts, the 1st respondent confirmed the detention order passed by the 2nd respondent. He submitted that the detaining 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.

7. We have carefully considered all the relevant materials and rival contentions of both parties. A perusal of the impugned detention order dated 09.05.2018 passed by the 2nd respondent 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'), goes to show that the detenu was arrested in Cr.No.148/2018 under Section 120(B) IPC & Section 25(1) (A) of Arms Act of PS RGI and recovered one illegal weapon from the possession of detenu under cover of panchanama. Subsequently, based on his own confession, his arrest was regularized on PT warrants in Crime Nos.159/2018 under Section 392 IPC of Mailardevpally PS, 71/2018 under Section 392 IPC of Shamshabad PS and Cr.No.39/2018 under Section 120-B, 341, 307, 392 IPC r/w Section 25(1-b)(a) & 27 of Indian Arms Act. The

detaining authority-2nd respondent, having regard to the involvement of detenu in series of criminal offences such as robberies, criminal conspiracy and procuring illegal weapons, with an intention to threaten the public to earn easy money in quick succession, came to the subjective satisfaction that there is every likelihood of detenu indulging in similar prejudicial activities, which are detrimental to public order, passed the impugned detention order. The above incidents and 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. The 1st respondent, upon considering the material placed by the sponsoring authority, confirmed the detention order passed by the 2nd respondent, vide proceedings G.O.Rt.No.1302, General Administration (Spl.(Law & Order), Department, dated 07.07.2018. Therefore, the argument that there is no case is made out for passing the detention order, does not merit consideration.

8. It is next contended by the learned counsel for the petitioner that the detenu was acquitted in CC No.1006 of 2018 (Cr.NO.159/2018) vide judgment dated 20.09.2018 and CC No.1985 of 2018 (Cr.No.71/2018) vide judgment dated 30.10.2018 by the VIII Metropolitan Magistrate, Cyberabad at Rajendranagar. He submits that

the aforesaid facts are not considered by the detaining authority and there is every chance of acquittal in remaining cases registered against detenu, as such, passing of detention order against detenu is illegal. Admittedly, the detention order was passed by the 2nd respondent on 09.05.2018, which is confirmed by the 1st respondent on 07.07.2018. But the detenu was acquitted in two criminal cases registered against him in CC No.1006 of 2018 and 1985 of 2018 vide judgments dated 20.09.2018 and 30.10.2018 respectively, which goes to show that as on the date of passing of detention order on 09.05.2018 and confirmation order by the 1st respondent on 07.07.2018, all the cases registered against detenu are still pending, therefore, the contention of the learned counsel for the petitioner that the said facts were not considered, has no legs to stand. 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.943, General Administration (Spl.Law and Order) Department, dated 15.05.2018, no reply affidavit is filed by the petitioner rebutting the aforesaid contention of the 2nd respondent. If the detaining authority came to the subjective satisfaction based on the material placed before it by the sponsoring authority, even if detenu was acquitted in cases registered against him, still it is not a bar to pass detention order against detenu by the detaining authority. Even otherwise, initiation of prosecution or discharge, acquittal of detenu cannot be a ground for invoking the

provisions of In **Haradhan Saha v. The State of West Bengal**¹, the Hon'ble Apex Court held as follows:

“The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.”

In view of above settled principle of law, even if detenu was acquitted in CC Nos.1006 of 2018 and 1985 of 2018, the detention order passed by the detaining authority-2nd respondent, cannot be said to be invalid.

9. 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 four cases registered against the detenu under Crime Nos.159/2018 under Section 392 IPC of Mailardevpally PS, 71/2018 under Section 392 IPC of Shamshabad PS and Cr.No.39/2018 under Section 120-B, 341, 307, 392 IPC r/w Section 25(1-b)(a) & 27 of Indian Arms Act, falls under the provisions of Chapter XVI/XVII, as such, the activities of the detenu falls under and within the meaning of ‘Goonda’ as defined under Section 2(g) of the Act 1 of 1986. The 2nd respondent also stated about *modus operandi* of the detenu in committing the alleged offences

¹ (1975) 3 SCC 198

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 imugned detention orders. As such, the contention of the learned counsel for the petitioner that the detenu does not comes under definition of 'goonda', cannot be accepted. 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. 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 affecting the maintenance of public order, within the meaning of Section 2(a) of the Act, is not tenable.

10. 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**²).

11. The detaining authority has elaborately considered all the aspects while passing orders of detention on 09.05.2018, which is confirmed by the 1st respondent vide orders dated 07.07.2018. In **Haradhan Saha v. The State of West Bengal (supra)**, 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 2nd respondent, which

² (2012) 4 Supreme Court Cases 699

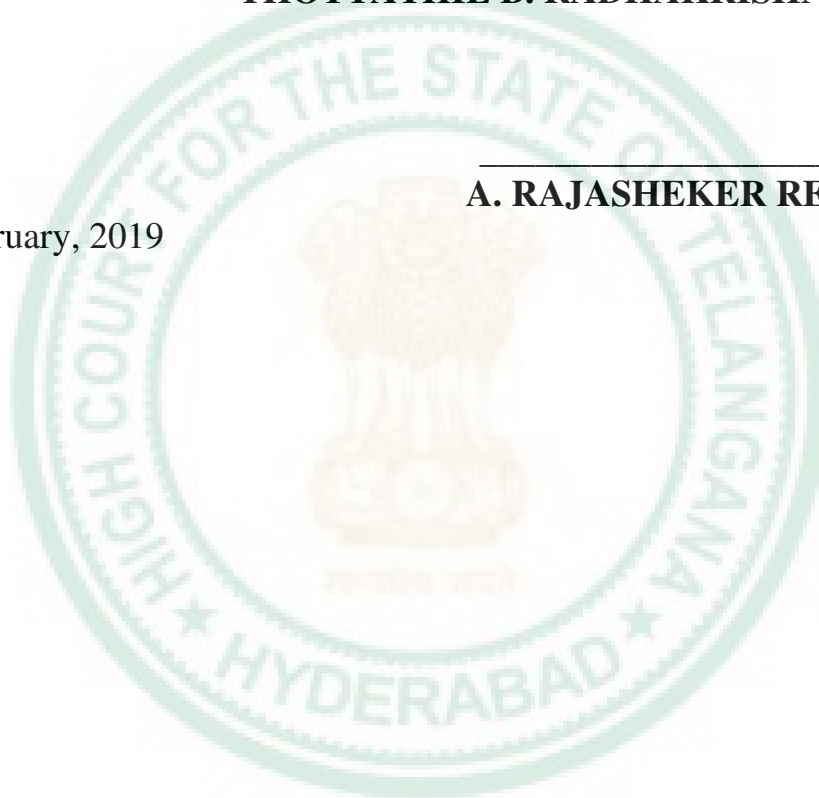
is confirmed by the 1st respondent, by exercising power of judicial review under Article 226 of the Constitution of India.

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

18th February, 2019
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**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.37867 OF 2018

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

Date: 18th February, 2019

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