

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.41479 OF 2018

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

This Writ Petition is filed assailing the proceedings in Rc.No.C1/2185/2018, dated 30.07.2018 of respondent No. 2, whereby he has ordered the detention of one Avunuri Narayana Swamy @ Madhu @ Sathyam S/o.Late Ramulu , (for brevity, 'the detenue'), which is confirmed by the 1st respondent vide G.O.Rt. No.2285, General Administration (Spl.(Law & Order) Department, dated 24.10.2018, as illegal.

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) Crime No.36 of 2018 at P.S.Komararam under Section 384 r/w 34 IPC; (2) Crime No.38 of 2018 at P.S.Komararam under sections 143, 148, 506, 384 r/w 149 IPC, Section 25(1)(a) Indian Arms Act; (3) Crime No.37 of 2018 at P.S.Gundala under Sections 384 r/w 34 IPC, Sections 25(1)(a) of Indian Arms Act; (4) Crime No.102 of 2018 at P.S.Yellandu under Sections 147, 148, 341, 352, 506 r/w 149 IPC, Section 25(1)(a) of Indian Arms Act and (5) Crime No.285 of 2018 at P.S.Subedari, Warangal District under Sections 386, 506 r/w 34 IPC on the allegation that he involved in offences like extortion, wrongfully restraining people and threatening and terrorizing the people. Though the detenue was

granted bail in all the crimes, the impugned preventive detention order was passed by the 2nd respondent on 30.07.2018 against him 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') holding him as a 'goonda' as defined under clause (g) of Section 2 of the Act of 1986 and that he was lodged in Warangal Central Prison. No documents are furnished to the detenue before passing the impugned detention order and that the same is without application of mind. The order of the 2nd respondent is confirmed by the 1st respondent, without there being any material on record against detenue.

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 detenue.

4. Heard Sri M.Rajamalla Reddy, learned counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

5. Learned counsel for the petitioner, while reiterating the averments in the affidavit filed in support of the Writ Petition, submitted that no case is made out against detenue for detaining authority to come to the subjective satisfaction for passing the detention order and that the offences alleged against detenue are simple in nature, which can be dealt with ordinary criminal law but not under the provisions of the Act of 1986. He submitted that he is not a 'goonda'. Further, though the

detenue was produced before the Advisory Board, the Board has rejected his case and the 1st respondent approved the detention order passed by the 2nd respondent. He submitted that though the detenue was granted bail in all the crimes registered against him, the impugned detention order was passed by the 2nd respondent, without considering the said aspect, which is illegal. He submitted that the detenue was not supplied with the material relied on by the detaining authority before passing the detention order, as such, the impugned detention order is liable to be set aside on this ground alone.

6. On the other hand, learned Government Pleader for Home, opposing the above submissions of the learned counsel for the petitioner, submitted that the detenue is a habitual offender as evident from the fact that he is an accused in as many as five criminal cases under and all the cases registered against him under Chapter XVI, XVII and XXII 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 criminal cases were registered during the year 2018, same had been considered as grounds of his detention and that his activities are prejudicial to maintenance of the public order. He submitted that the detaining authority had rightly considered material, *modus operandi* of the detenue in committing each crime and arrived at subjective satisfaction that the detenue is a habitual offender, passed the order of detention.

7. We have carefully considered all the relevant materials and rival contentions of both parties.

8. A perusal of the impugned detention order dated 30.07.2018 passed by the 2nd respondent, which is approved by the 1st respondent vide proceedings G.O.Rt.No.1564, General Administration (Spl.(Law & Order), Department, dated 09.08.2018 goes to show that since the detainee involved in the offences viz., terrorizing people, committing murders & attempting to commit murders by using illegal deadly fire arms, kidnapping people, committing extortions, threatening people, preventing public servants from discharging their official duties and damaging public property, cases in (1) Crime No.36 of 2018 at P.S.Komararam under Section 384 r/w 34 IPC; (2) Crime No.38 of 2018 at P.S.Komararam under sections 143, 148, 506, 384 r/w 149 IPC, Section 25(1)(a) Indian Arms Act; (3) Crime No.37 of 2018 at P.S.Gundala under Sections 384 r/w 34 IPC, Sections 25(1)(a) of Indian Arms Act; (4) Crime No.102 of 2018 at P.S.Yellandu under Sections 147, 148, 341, 352, 506 r/w 149 IPC, Section 25(1)(a) of Indian Arms Act and (5) Crime No.285 of 2018 at P.S.Subedari, Warangal District under Sections 386, 506 r/w 34 IPC were registered against the detainee. All the crimes registered against detainee within a period 15 days i.e., from 22.06.2018 to 05.07.2018 in quick succession and that in all the crimes, the detainee was arrayed as 'A1'. The detaining authority also referred to the past history of the detainee, wherein as many as 17 (seventeen) cases are registered against him during the years 1993 to 2017 and most of the cases are under investigation and some cases are pending trial. The above incidents established the involvement of detainee in the crimes registered against him in quick succession would

amply show that he is a habitual offender and that his activities are prejudicial to the maintenance of public order. The detaining authority, basing on the cogent material placed before it by sponsoring authority and after taking into consideration the involvement of detainee 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, is not tenable.

9. It is next contended by the learned counsel for the petitioner that though the case of detainee was referred to Advisory Board by the 1st respondent, the Advisory Board has rejected his case, without considering the material on record. In the counter affidavit filed by the 2nd respondent, it is categorically stated that the 1st respondent referred the case of detainee to the Advisory Board, which in turn reviewed the detention order on 14.09.2018 and submitted its report to the Government. A perusal of the confirmation order dated 24.10.2018 goes to show that the Advisory Board had heard the detainee, his friend Vemulapalli Venkata Ramaiah and also after perusing the written representation of the detainee and material, submitted report to the Government. Though it is stated that the Government upon considering the entire material, besides the report of the Advisory Board, extended the detention of the detainee for a period of 12 months, as per Section 12(1) r/w 13 of the Act of 1986 vide G.O.Rt.No.2285, General Administration (Spl.Law and Order) Department, dated 24.10.2018, no reply affidavit is filed by the petitioner rebutting the aforesaid contention

of the 2nd respondent. As such, the contention of the learned counsel for the petitioner that without considering the material on record and without hearing the detinue, the Advisory Board rejected his case, cannot be accepted.

10. With regard to another contention that the detinue 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 would abundantly show that since several cases registered against the detinue under various provisions of IPC, are covered by the provisions of Chapter XVI, XVII and XXII of IPC and that the detinue is a habitual offender. The 2nd respondent also stated about the *modus operandi* of the detinue in committing the alleged offences and also found that the detinue continued to commit the same offences, even after releasing on bail in earlier cases, and the detaining authority, having felt that the detinue 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 detinue does not come under definition of 'goonda', does not merit consideration.

11. It is contended by the learned counsel for the petitioner that the detention order was passed even though the detinue was granted bails in all the crimes registered against him. A perusal of the affidavit filed in support of the Writ Petition, wherein it is stated that the detinue was granted bails in all the crimes registered against him, but he could not be

released since he failed to produce sureties. Except stating so, there is no whisper in the affidavit in which criminal case he was granted bail. That apart, in the impugned detention order as well as in the counter affidavit it is categorically stated that the detenue moved bail application on 11.07.2018 in Cr.No.38/2018 before the I Addl.JFCM, Khammam. It is also stated in the counter that except one bail petition, he has not moved any bail petitions in other crimes. Neither any material is filed before this Court evidencing that the detenue was granted bail before passing the order of detention in any of the crimes registered against him nor reply affidavit is filed by the petitioner rebutting the aforesaid averments in the counter affidavit. Admittedly, the detenue was arrested on 04.07.2018 in Cr.No.38/2018 of Komararam Police Station and in the remaining cases his arrest was regularized on P.T warrants. At the time of passing of detention order by the 2nd respondent, the detenue was in judicial remand. It is well-settled law that in a case where the detenue 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 detenue coming out of judicial custody and repeat the offences, which was recorded in this case by the detaining authority. Therefore, the contention of the learned counsel for the petitioner that the detention order was passed even though the detenue was granted bails in the crimes registered against him, 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.

12. The submission of the learned counsel for the petitioner that the detinue was not supplied with papers before passing of the impugned detention order by the 2nd respondent is not correct. A perusal of the material papers filed by the learned Government Pleader for Home would show that all the material papers are furnished to the detinue and he also acknowledged the same.

13. 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**¹).

14. The detaining authority has elaborately considered all the aspects while passing orders of detention on 30.07.2018, which is confirmed by the 1st respondent vide orders dated 24.10.2018. In **Haradhan Saha v. The State of West Bengal**², 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 principle of law laid down in the aforesaid judgment and also after going through the materials in the grounds of detention, in view of continuity of detenu in committing similar type of offences like criminal trespass, kidnapping, committing extortions, threatening and terrorizing people, preventing public servants from discharging their official duties, damaging public property and possessing illegal weapons, which are causing feeling of insecurity in the minds of public, we are not inclined to interfere with the order of detention passed by the 2nd respondent, which is confirmed by the 1st respondent, by exercising power of judicial review under Article 226 of the Constitution of India.

¹ (2012) 4 Supreme Court Cases 699

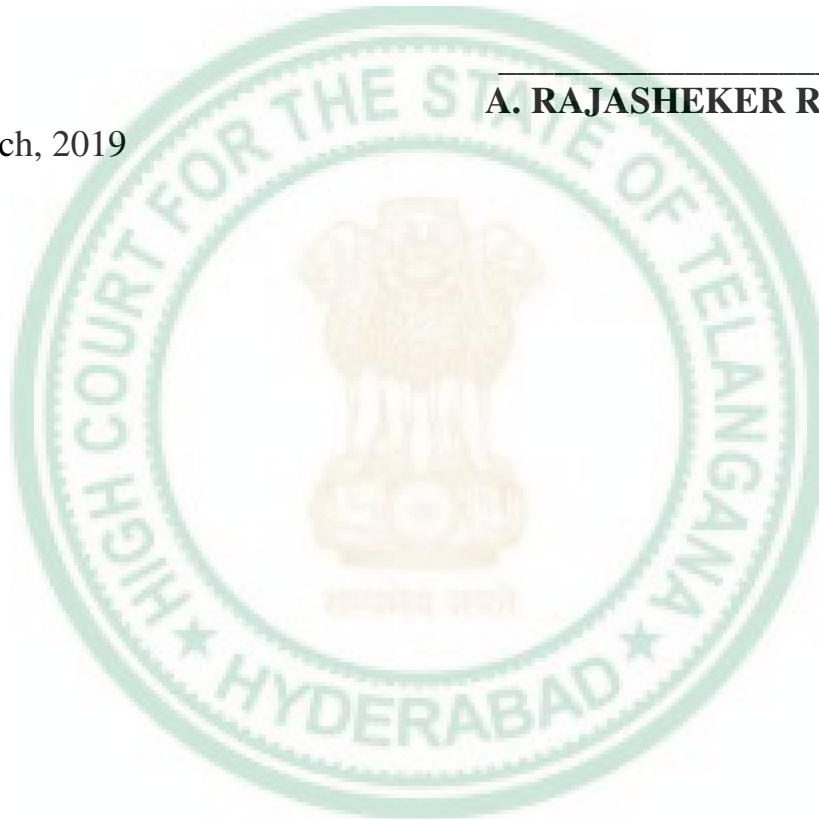
² (1975) 3 SCC 198

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

14th March, 2019
kvs

A. RAJASHEKER REDDY, J



**HON'BLE THE CHIEF JUSTICE
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

P.D Judgment for Lordship's kind perusal

WRIT PETITION No.41479 OF 2018

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

Date: 14th March, 2019

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