

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.42066 OF 2018

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

This Writ Petition is filed assailing the proceedings in C.No. 43/PDC/KNR/2018, dated 23.08.2018 of respondent No. 2, whereby he has ordered the detention of one Md.Chand Pasha, 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 son of the petitioner (for short, "the detainee"), which is confirmed by the 1st respondent vide G.O.Rt.No.2384, General Administration (Spl.(Law & Order) Department, dated 03.11.2018, as illegal and arbitrary.

2. Brief summary of the averments in the affidavit filed in support of the Writ Petition is that cases in Cr.Nos.177 of 2018, 233 of 2018 and 201 of 2018 under Sections 420, 506 of IPC were registered against the detainee of the Police Stations Karimnagar, Kothapalli and Manakondur respectively, on the allegation that he had been deliberately indulging in cheating unemployed youth and alleged to have collected certain amounts from them with a promise to provide jobs in Mission Bageeratha, Telangana Water Grid and subsequently issued fake appointment letters in the name of Mission Bageeratha, Telangana Water Grid. The offences alleged against the detainee in the

detention order are civil in nature and will not affect any maintenance of public order, as such, invocation of the Act of 1986 is arbitrary and illegal. The detinue was granted bail in Cr.No.201 of 2018 of PS Manakondur and the bail application in Crime No.233 is pending and that in Crime No.177 of 2018 of Karimnagar Rural Police Station, a notice under Section 41 of Cr.P.C was issued.

3. On 23.08.2018, the 2nd respondent-Commissioner of Police passed a detention order against detinue under Sub-Section (2) of Section 3 of the Act of 1986 while holding the detinue to be a 'goonda' as defined under clause (g) of Section 2 of the Act of 1986, on the ground that the detinue had been indulging in a series of offences, such as cheating unemployed people by promising them jobs in Mission Bageeratha, Telangana Water Grid, in the limits of Police Commissionerate, Karimnagar. The order of the 2nd respondent dated 23.08.2018, is approved by the 1st respondent vide G.O.Rt.No.1713, dated 29.08.2018 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.2384, dated 03.11.2018.

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 detinue.

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 23.08.2018 and confirmation order passed by the 1st respondent vide G.O.Rt.No.2384, dated 03.11.2018, submitted that no case is made out against detainee for detaining authority to come to the subjective satisfaction for passing the detention order. He submitted that the allegations made against the detainee are civil in nature but not involve any incident prejudicial to the maintenance of public order, as such, the same is liable to be set aside. He further submitted that the detainee was granted bail in Cr.No.201 of 2018, and bail application in Cr.No.233 of 2018 of Kothapally Police Station is pending, as such, there is no likelihood of indulging in similar activities detrimental to public order. He further submitted that the detainee is not a 'goonda' and that he was implicated basing on his confession and also that there is no independent evidence to connect the detainee 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 24.09.2018 was submitted before the 1st respondent on 01.10.2018, the same was rejected on 03.11.2018, on which day confirmation order was passed, as such, there is an abnormal delay in considering the representation of the detainee, which is illegal and on this ground alone, the order of detention is liable to be set aside. He submitted that the statements of persons under Section 161 from whom the amounts were collected by the detainee and also bail order in ground No.1 were not supplied to the

detenue to make effective representation to the detaining authority and that the same are not placed before the detaining authority. In support of his contention, he relied on the judgment of **Pebam Ningol Mikoi Devi v. State of Manipur and others**¹.

7. Opposing the above submissions, learned Government Pleader for Home, submitted that the detenue is a habitual offender engaging himself in unlawful activities and indulged in series of offences such as cheating unemployed youth by promising them jobs in Mission Bageeratha, Telangana Water Grid, which is evident from the fact that he is an accused in three criminal cases under Sections 420 and 506 of IPC and all the cases registered against him under Chapter XVI/XVII/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 several cases in the police station limits of Karimnagar Police Commissionerate, were registered against the detenue during the year 2011 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 detenue in committing each crime and arrived at subjective satisfaction that the detenue is a habitual offender, passed the order of detention. He submitted that the representation of the petitioner dated 24.09.2018 was forwarded to the Advisory Board and after receipt of report and opinion from it, the 1st respondent passed confirmation order on 03.11.2018 and on the same day, the

¹ (2010) 9 Supreme Court Cases 618

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.

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 or 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”

10. A perusal of the impugned detention order dated 23.08.2018 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 11(eleven) offences during the years 2011 to

2018 in quick succession within the police station limits of Karimnagar Police Commissionerate. Though several cases were registered against detainee, the detaining authority has considered his involvement in three offences which were committed by him in quick succession during the year 2018 i.e., Cr.No.177/2018 under Section 420, 506 IPC, Cr.No.233/2018 under Section 420 IPC and Cr.No.201/2018 under Section 420 IPC of PS Manakondur, within the limits of Karimnagar Police Commissionerate. The detainee was arrested on 08.08.2018 in Cr.No.201/2018 under Sections 420 & 506 IPC of PS Manakondur and basing on his confession, he was taken into police custody on 16.08.2018 in Cr.No.233/2018 of PS Kothapalli and seized the copies of certificates and other documents pertaining to the complainant Rodda Naresh i.e., SSC Memo No.EE-309438, Intermediate Memo No.0818218069, Aadhar Card No.992096175673 from the house of Md. Munnabee at Rekurthy village, where the detainee had stayed as tenant under the cover of confession and recovery panchanama in the presence of independent mediators. The detaining authority has considered each crime registered against detainee, his *modus operandi* and linked the evidence against detainee. The detainee in his confessional statement has admitted to have committed all these offences and based on his confessional statement, copies of certificates and other documents were recovered under the cover of panchanama. The above incidents established the involvement of detainee in the crimes registered against him in quick succession would show that he is a habitual offender. Taking the advantage of unemployment among

youth, the detainee dishonestly cheated the complainants and collected huge amounts in the name of providing jobs in Mission Bhageeratha, Telangana Water Grid by giving fake appointment letters. The said incidents created a feeling of insecurity in the minds of public at large. The activities of detainee 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 detainee in committing similar type of offences in quick succession, arrived at subjective satisfaction and passed order of detention.

11. In **Commissioner of Police and others v. Smt C.Anita²**, the Hon'ble Supreme Court while dealing with similar issue, held as follows:

“8. “Public order” is what the French call “*order publique*” and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? (See *Kanu Biswas v. State of W.B.* [(1972) 3 SCC 831 : 1973 SCC (Cri) 16 : AIR 1972 SC 1656])

“9. “Public order” is synonymous with public safety and tranquility: “it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State”. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. [See *Ram Manohar Lohia (Dr.) v. State of Bihar* [(1966) 1 SCR 709: 1966 Cri LJ 608].

In the light of above principles, the submission of the learned counsel for the petitioner that grounds mentioned in the detention order

² (2004) 7 Supreme Court Cases 467

would not affect public order, but would affect only law and order against individuals, cannot be accepted. In the instant case, the detinue, taking advantage of unemployment among youth, had collected huge amounts in the name of providing jobs in Mission Bhageeratha, Telangana Water Grid, which is a government organization, by giving fake appointment letters. The above incidents created panic situation among the general public in the limits of Karimnagar Police Commissionerate. In view of above, the submission of the learned counsel for the petitioner 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.

12. It is next contended by the learned counsel for the petitioner that even though the detinue was granted bail in one case and his bail application is pending in another case, 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 petition by the detinue in Cr.No.201/2018 of PS Manakondur vide CrI.M.P.No.645/2018, dated 10.08.2018 and ordered to be released on bail vide Dis.No.587, dated 18.08.2018. The detaining authority had also considered filing of bail petition in Cr.No.233/2018 of PS Kothapalli vides CrI.M.P.No.869/2018, dated

18.08.2018 and the same is pending for consideration. The 2nd respondent, after having satisfied that there is every likelihood of detinue moving bail petition in the remaining case 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 detinue was arrested on 08.08.2018 in Cr.No.201/2018 under Section 420 IPC of PS Manakondur of Karimnagar Police Commissionerate and remanded to judicial custody and lodged in District Jail, Karimnagar. The detaining authority found that the detinue was still in judicial custody in connection with the other crimes wherein bail petitions are pending, 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.

13. In **Haradhan Saha v. The State of West Bengal**³, 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 detinue 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

³ (1975) 3 SCC 198

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.

14. In **B.Manjula v. The State of Telangana, rep. by its Chief Secretary, General Administration (Law and Order)**⁴, 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 genuine likelihood of detenue 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 one crime, and pendency of bail application in remaining case, as such, there is no likelihood of detenue

⁴ 2016 SCC Online Hyd 209; (2017) 1 ALD (Cri) 218

coming out and indulges in similar offences, does not merit consideration.

15. It is next contended by the 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 24.09.2018 after passing of detention order on 23.08.2018 and same was forwarded to the 1st respondent by the 2nd respondent on 01.10.2018. The 1st respondent accorded approval to the detention order dated 23.08.2018 passed by the 2nd respondent, vide G.O.Rt No.1713, General Administration (Spl.(Law & Order) Department, dated 29.08.2018. Thereafter, the Advisory Board constituted under Section 9 of the Act of 1986 reviewed the same on 03.11.2018 and after having heard the detenu 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 father, submitted report and opinion on 04.10.2018 to the 1st respondent. On 03.11.2018 i.e., within three months of the detention of the detenu, the detention order was

confirmed by respondent No.1 and that immediately on the same day on which the detention order was confirmed, the detenu'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 detenu before confirmation of the detention order by the Government.

i) In **K.M.Abdulla Kunhi and B.L.Abdul Khader v. Union of India**⁵ (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.”

(ii) The aforesaid view was affirmed by the Hon'ble Supreme Court in **D.M.Nagaraja v. Government of Karnataka**⁶, wherein it is held as follows:

⁵ (1991) 1 Supreme Court Cases 476

⁶ (2011) 10 Supreme Court Cases 215

“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.”

(iii) 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.”

In the light of principle laid down in the judgments referred to above, 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.

16. Though, learned counsel for the petitioner placed reliance in the Judgment reported in the case of **Pebam Ningol Mikoi Devi v. State of Manipur (supra)**, the facts in the aforesaid judgment and in the present case are distinguishable. In the above case, the detention order was passed on 24.09.2009 and grounds of detention were served on 28.09.2009 and same was approved by the Governor of Manipur, by his order dated 07.11.2009. Though the appellant therein filed representation on 09.10.2009, the same was forwarded to the Central Government by the State Government on 16.10.2009, with a delay of 7 days, without offering any explanation for such delay by the State Government. In those circumstances, the impugned detention order passed by the detaining authority was set aside by the Supreme Court. In the instant case, though the representation of the father of the detenue dated 24.09.2018 received by the Government on 01.10.2018, but the same was rejected on the day when the detention order was confirmed by the 1st respondent on 03.11.2018. 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.

17. Learned counsel for the petitioner submitted that the detention order was passed based on stale grounds. But, as already stated supra, the detenue committed similar type of offences i.e., dishonestly cheating the unemployed youth by promising them jobs in Mission Bhageeratha, Telangana Water Grid during the year 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.

18. Lastly, learned counsel for the petitioner submitted that no statements of witnesses under Section 161Cr.P.C were furnished to the detenue before passing the impugned order by the detaining authority. A perusal of the material papers filed by the learned Government Pleader for Home shows that the detenue acknowledged the receipt of the same.

19. 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**⁷).

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

15th March, 2019
kvs

⁷ (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 PETTION No.42066 OF 2018

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

Date: 15th March, 2019

kvs

