

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

**AND**

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

**WRIT PETITION No.42592 OF 2018**

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

This Writ Petition is filed assailing the proceedings in SB ID.No. 32/S1/PD/KMM/2018, dated 11.07.2018 of respondent No. 2, whereby he has ordered the detention of one Guguloth Babu Lal S/o.Hatchu, 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 husband of the petitioner (for short, "the detenue"), which is confirmed by the 1<sup>st</sup> respondent vide G.O.Rt.No.2395, General Administration (Spl.(Law & Order) Department, dated 05.11.2018, 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 Crime Nos.362 of 2016 and 340 of 2017 of Police Station Afzalgunj Police Station, Hyderabad and Karepally Police Station, Khammam, respectively, which were registered against him under Section 20(ii) (b) (c) r/w 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985') alleging that he is a "Drug Offender" under Section 2(f) of the Act of 1986. The impugned detention order passed by the 2<sup>nd</sup> respondent vide proceeding SB.ID. No. 32/S1/PD/KMM/2018, dated 11.07.2018 on the allegation that he indulged in illegal and dangerous

activities of peddling of narcotic drugs among innocent people and causing damage to the health and the said act is adversely affecting the maintenance of public order and public health. The order of the 2<sup>nd</sup> respondent was approved by the 1st respondent vide G.O.Rt.No.1423, dated 21.07.2018, which is subsequently confirmed by the 1<sup>st</sup> respondent vide G.O.Rt.No.2395, dated 05.11.2018, basing on the report of the advisory board. The 2<sup>nd</sup> respondent passed impugned detention order, without application of mind, as such, the same is liable to be dismissed.

3. Counter affidavit is filed by the 2<sup>nd</sup> respondent denying the averments in the affidavit filed in support of the Writ Petition and justified the reasons for passing detention order against detainee.

4. Heard Sri G.L.Narsimha Rao, 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 detainee for the detaining authority to come to the subjective satisfaction for passing the detention order. He submitted that though the detainee was granted bail, there is no likelihood of him indulging in similar activities detrimental to public order, but the said aspect is not considered by the detaining authority, which is illegal. He further submitted that the detainee is not a 'drug offender' and that he was implicated basing on his confession, as such, the impugned detention order passed by the 2<sup>nd</sup> respondent, is without application of mind.

6. Resisting the above submissions, learned Government Pleader for Home, submitted that the detenue is a drug offender within the meaning of clause (f) of Section 2 of the Act of 1986, which is evident from the fact that he is an accused in Cr.No.362/2016 under Section 8(c) r/w Section 20(ii)(b) of Afzalgunj Police Station, wherein he was arrested and remanded to judicial custody. After his release on bail in the said case, again he involved in an offence in Cr.No.340/2017 of PS Karepalli, Khammam under section 20(b) r/w Section 8(c) of the Act of 1985, and same have been considered as grounds of detention and are prejudicial to maintenance of the public order and public health. He submitted that the detaining authority had rightly considered material placed before him and arrived at subjective satisfaction that the detenue is a drug offender, passed the order of detention. He submitted that the entire record has been placed before the detaining authority, as such, the order of the 2<sup>nd</sup> respondent, which is confirmed by the 1st respondent vide G.O.Rt.No.2395, dated 05.11.2018, needs no interference.

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

8. 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;

(g) ....

(f) "Drug Offender" means a person, who manufactures, stocks, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of the provisions of Drugs and Cosmetics Act 1940 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) and rules, notifications and orders, under either Act, or in contravention of any other law for the time being in force, who knowingly expends or applies any money in the above mentioned things by himself or through any other person or who abets in any other manner the doing of any such thing."

9. A perusal of the impugned detention order dated 11.07.2018 as well as the grounds of detention would clearly show that the detenue is a drug offender, which is evident from the fact that he involved in an offence of peddling of Narcotic Drug i.e., 'Ganja' and a case in Crime No.340/2017 under Section 20(b) r/w Section 8(c) of the Act of 1985 of Karepally Police Station was registered against detenue. The police seized ganja packets weighing about 500 kgs worth total Rs.6,00,000/-, DCM van bearing No. AP 36W 0048, black colour scorpio bearing No.AP 29AF 4578 along with cash of Rs.30,000/- and cell phones from the possession of the accused and his two associates. It is also found in the detention order that on interrogation, the detenue voluntarily confessed to have committed this offence and similar offence vide Cr.No.362/2016 under Section 8 (C) r/w 20 (ii)(b)(C) of the Act of 1985 of Agzalgunj Police Station,

Hyderabad. The detenue was caught red handed while transporting huge quantity of Ganja i.e., 500 kgs and he confessed that he procured the contraband at Visakhapatnam at cheaper rate and transporting the same for sale at higher rate for illegal profits. The detenue was arrested on 04.12.2017 and remanded to judicial custody on 05.12.2017. The detaining authority has considered each crime registered against detenue, his *modus operandi* and linked the evidence against him to the crimes, besides recovering 500 kgs of ganja from him and his associates. The detenue in his confessional statement has admitted to have committed the offences and based on his confessional statement, material objects were recovered under the cover of panchanama. The detaining authority also considered the reports of Government Chemical Examiner, who analyzed the samples of contraband, wherein he stated that samples are 'ganja' and having considered the ill-effects of the same on the general public health, who addicted to consume the same and its impact on the society, passed the impugned detention order with a view to prevent him from further indulging in such prejudicial activities which are detrimental to public order and widespread danger to public health. The detaining authority, basing on the cogent material placed before it by sponsoring authority and after taking into consideration the involvement of detenue in these offences, arrived at subjective satisfaction for passing 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 detenue is a 'drug offender' within the meaning of Section 2(f) of the Act, and that his activities are not prejudicially effecting the maintenance of

public order, within the meaning of Section 2(a) of the Act, does not merit consideration.

10. It is next contended by the learned counsel for the petitioner that even though the detinue was enlarged on bail and attending the cases before the concerned courts, the detaining authority, without considering the said fact, has passed the impugned detention order, which is illegal. In the detention order, it is found that though the detinue moved three bail petitions before the Special Judge for Trial of NDPS Act, 1985-cum-I Addl. Sessions Judge, Khammam, the same were dismissed. Subsequently, fourth bail petition in CrI.M.P.No.166/2018 moved by the detinue, wherein he was granted bail and released on 21.02.2018 vide Release Order Dis.No.211/2018. The detinue involved in peddling of Narcotic Drugs among the innocent people, which is causing irreparable damage to their body parts/organs including central nervous system, thereby crippling the mental and physical health of the people addicted to drugs, which is adversely affecting the public order and public health. The 2<sup>nd</sup> respondent, being the detaining authority, after having considered the entire material including the bail petitions and bail orders passed therein and having satisfied that there is imminent possibility of him 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.

In **Haradhan Saha v. The State of West Bengal**<sup>1</sup>, 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 detainee 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 laid down in the above case, it is for the 2<sup>nd</sup> respondent-detaining authority to reasonably satisfy himself that there is a likelihood of detainee 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, as such, there is no likelihood of detainee indulge in similar offences, cannot be accepted. The order of 2<sup>nd</sup> 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.

11. Learned counsel for the petitioner contended that as per Section 3(2) of the Act, the period of detention for the first time should not exceed ‘three months’ and that the government cannot direct or extend the period of detention upto maximum period of 12 months in one stroke. The period

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<sup>1</sup> (1975) 3 SCC 198

of three months referred to in Section 3(2) is for delegation of powers by the Government to the Collectors and District Magistrates/Commissioner of Police to exercise powers of Government under Section 3(1), but not with regard to period of detention. In **T.Devaki v. Government of Tamil Nadu**<sup>2</sup>, the Hon'ble Supreme Court held as follows:

“10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression “the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order” occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.

In the light of the principle laid down in the aforesaid judgment, it is for the detaining authority to specify the period of detention of the detenue and non mentioning of same does not invalidate the order of detention.

12. 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

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<sup>2</sup> 1990 (2) SCC 456

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**<sup>3</sup>).

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.

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**THOTTATHIL B. RADHAKRISHNAN, CJ**

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**A. RAJASHEKER REDDY, J**

22<sup>nd</sup> March, 2019  
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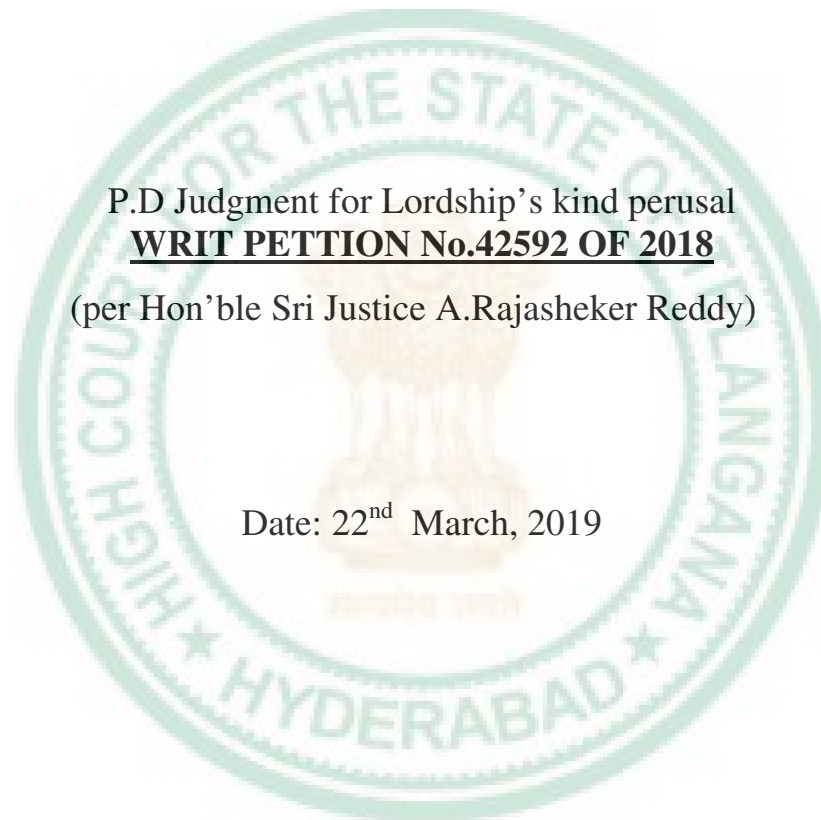
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<sup>3</sup> (2012) 4 Supreme Court Cases 699

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