

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

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.42368 OF 2018

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

This Writ Petition is filed assailing the proceedings in C.No. 941/WRC/CSB-XI/2018, dated 20.08.2018 of respondent No. 2, whereby he has ordered the detention of one Bejjanki Swathi, 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 wife of the petitioner (for short, "the detenue"), which is confirmed by the 1st respondent vide G.O.Rt.No.2399, 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.68 of 2018 and 54 of 2018 of Police Station Rayaparthi and Police Station Wardhannapet, respectively, which were registered on 05.06.2018 against her under Section 20(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985') on the complaint given by Sub-Inspector, Rayaparthi Police Station alleging that she is a "Drug Offender" under Section 2(f) of the Act of 1986. She was arrested on 06.06.2018 by the Police, Rayaparthi Police Station. The

impugned detention order passed by the 2nd respondent vide proceedings C.No.941/WRC/CSB-XI/2018, dated 20.08.2018 on the allegation that she 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 affecting adversely the maintenance of public order and public health. The order of the 2nd respondent was approved by the 1st respondent vide G.O.Rt.No.1699, dated 28.08.2018, which is subsequently confirmed by the 1st respondent vide G.O.Rt.No.2399, dated 05.11.2018, basing on the report of the advisory board. Though the detainee was granted bail in both the crimes and not involved in any offences except these two cases, the 2nd respondent passed impugned detention order, without application of mind.

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 detainee.

4. Heard Sri P.Prabhakar 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 detainee for the detaining authority to come to the subjective satisfaction for passing the detention order. He submitted that the detainee was granted bail in two crimes registered against her and she was attending the police station twice in a week as per the conditions laid down in the bail order, as such, there is no likelihood of her indulging in

similar activities detrimental to public order, but the said aspect is not considered by the detaining authority, which is illegal. He submitted that except two cases registered against detainee, no case is registered against her relating to narcotic drugs. He further submitted that the detainee is not a 'drug offender' and that she was implicated basing on her confession and also on the confession of Sriramoju Venkateshwarlu and Sriramoju Padma, as such, the impugned detention order passed by the 2nd respondent, is without application of mind. He submitted that neither statements of persons who witnessed the incident supplied to the detainee and nor were placed before the detaining authority, as such, there is no subjective satisfaction for the detaining authority to pass impugned detention order, as such, the same is liable to be set aside on this ground alone.

6. Resisting the above submissions, learned Government Pleader for Home, submitted that the detainee 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 she is an accused in Cr.No.68 of 2018 of Rayaparthi Police Station and Cr.No.54 of 2018 of Wardhannapet of Police Station, Warangal registered under Section 20(ii)(c) of the Act of 1985, which were registered against her 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 detainee is a drug offender, passed the order of detention. He submitted that the entire record including all the statements recorded by the police under Section

161 Cr.P.C have been placed before the detaining authority and also furnished to the detenue, as such, the order of the 2nd respondent, which is confirmed by the 1st respondent vide G.O.Rt.No.2399, 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 20.08.2018 as well as the grounds of detention would clearly show that the detainee is a drug offender, which is evident from the fact that she involved in an offence of peddling of Narcotic Drug i.e., 'Ganja' and she secretly stored the same in her parents' house at Keshavapuram village of Rayaparthi Mandal. When the detainee had been engaging herself along with her associates in unlawful acts such as possession of 'Ganja' a narcotic substance for the purpose of sale to the innocent youth in Warangal City, a case in Crime No.68 of 2018 under Section 20(ii)(c) of the Act of 1985 of Rayaparthi Police Station was registered by the Police on 05.06.2018. It is also evident from the impugned detention order that when the police searched the house of the parents of the detainee, wherein they found 47 polythene packets containing 94 Kgs of dry ganja. When the police apprehended the detainee, she admitted to have purchased same from Perala Lalitha and Vemula Shoba, both residents of Railway Gate Gudisalu, LVR Nagar, Warangal at Rs.6,000/- per kg and selling at Rs.10,000/- per kg. Similarly on 05.06.2018 a case in Crime No.54 of 2018 under Section 20(ii)(c) of Act of 1985 of Wardannapet Police Station was registered against detainee, Sriramoju Venkateshwarlu and Sriramoju Padma on the ground that the police seized 6 kgs of dry ganja in the possession of Sriramoju Venkateshwarlu and Padma, which was allegedly supplied by the detainee. The detainee was arrested on 06.06.2018 at 05.00 hours and produced before the III Additional Judicial First Class Magistrate at Warangal for judicial remand. On 15.06.2018, the detainee was produced on PT warrant by the Wardhannapet Police in Cr.No.54 of 2018. The detaining authority

has considered each crime registered against detainee and linked the evidence against detainee to the crimes, besides recovering 94 kgs of ganja in her possession. The detainee in her confessional statement has admitted to have committed the offences and based on her 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 her 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 detainee 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 detainee is a 'drug offender' within the meaning of Section 2(f) of the Act, and 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.

10. It is next contended by the learned counsel for the petitioner that even though the detainee was enlarged on bail in two cases and attending police station twice in a week, as per the conditions laid down in the bail

order, 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 granting of conditional bails to the detainee by the Special Sessions Judge for NDPS-cum-Additional Sessions Judge, Warangal vide CrI.M.P.No.504 of 2018 in Cr.No.68/2018 under Section 20(ii)(c) of NDPS Act of Police Station Rayaparthi and also in Cr.No.54/2018 in CrI.M.P.No.505 of 2018 on 02.08.2018. Since the detainee involved in peddling of Narcotic Drugs among the innocent people in Warangal City, which have been endangering the lives of youth, by 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 at large, the 2nd respondent, after having satisfied that there is imminent possibility of her indulging in similar type of offences and that unless she is detained under preventive laws, with a view to prevent her 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**¹, 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.”

¹ (1975) 3 SCC 198

In view of principle laid down in the above case, it is for the 2nd 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 her 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 two crimes and no crime is registered subsequently as drug offender, as such, there is no likelihood of detainee indulge in similar offences, cannot be accepted. The order of 2nd respondent further shows that there is a compelling necessity to detain her in order to prevent her indulging in such activities in future which are prejudicial to the maintenance of public order.

11. The submission of the learned counsel for the petitioner that the detainee 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 detainee and she also acknowledged the same.

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 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).

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

22nd March, 2019
kvs

² (2012) 4 Supreme Court Cases 699

**HON'BLE THE CHIEF JUSTICE
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P.D Judgment for Lordship's kind perusal
WRIT PETITION No.42368 OF 2018
(per Hon'ble Sri Justice A.Rajasheker Reddy)

Date: 22nd March, 2019

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