

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT PETITION No.42708 of 2018

ORDER: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard the learned counsel for the petitioner and the learned Additional Advocate General for the respondents.

2. This writ petition is filed challenging a preventive detention order issued under the provisions of the Telangana Prevention of Dangerous Activities of Boot-Leggings, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (hereinafter referred to as 'the Act').

3. The sum and substance of the basis of the preventive detention order is that the detenu, who is around 25 years of age and who is a teacher in a private school, alleged to have involved in activities, which fall under the provisions of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POSCO Act') and different provisions from Sections 344 to 377 and 509 I.P.C. A crime was registered as regards an activity with a girl child, who is

said to have around 16 years of age at the relevant time. In that solitary incident, the criminal case is pending. We are shown that the competent Sessions Court has granted bail to the detenu insofar as that case is concerned. That has been granted since the State failed to file charge sheet even after the expiry of statutory period of 90 days.

4. Learned counsel for the petitioner argued that the case in hand is one where, even if all the allegations are taken together, it constitutes only a single occurrence and there is no prior prejudicial activity, which is attributed to the detenu. He also points out that there is no basis for any apprehension that the detenu will involve in subsequent prejudicial activities since according to him, the police papers as well as the statement recorded from the victim under Section 164 Cr.P.C. also tend to indicate that it could have been only a solitary matter as between the accused (detenu) and the victim in that case. According to the learned counsel for the petitioner, there is absolutely no iota of indication in the police papers in relation to that case that the detenu is one, who is susceptible, is a repeated offender and is likely to indulge in activities of similar nature so as to bring an order of detention being available with the framework of Section 2(a) of the Act, which defines as to what is 'acting in any manner prejudicial to the maintenance of public order'.

5. *Per contra*, it is argued on behalf of the State that the incident relates to a school and quality and credibility of the

teaching staff is one that is a benchmark that is to be maintained. It is, therefore, argued that a sole prejudicial activity, which amounts to offences punishable under the POSCO Act or under different penal provisions of the IPC, which are noticed above, is sufficient enough for the detaining authority to conclude that the preventive detention is necessary to ensure that the detenu does not continue to get himself involved in such activities.

6. The detenu is classified as a 'sexual offender' for the purpose of impugned preventive detention order. That term is defined in clause (v) of Section 2 of the Act. The 'sexual offender' is one of those, who are enumerated while defining 'acting in any manner prejudicial to the maintenance of public order' in clause (a) of Section 2 of the Act. But, the fundamental thrust of classifying a person as one 'who is acting in any manner prejudicial to the public order' means that he 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.

7. There is no subjective satisfaction of the detaining authority as reflected in the detention order to the effect that the activity, which is attributed to the detenu, is the one which gives sufficient material to infer that the detenu is one who is likely to engage or prepare to engage himself in any activity as a sexual offender. There is no satisfaction expressed by the detaining authority to that effect in the

impugned detention order. All that has been said is that having regard to the involvement of the detenu in heinous activity such as wrongful confinement of a minor girl and sexually assaulting in an organised fashion and upon perusing the materials, the detaining authority satisfied that there are grounds to order preventive detention.

8. The expression of satisfaction by the detaining authority does not amount to subjective satisfaction being disclosed on any ground preferably to the materials on record. It is a matter of fact that even going by the grounds of detention and the preventive detention order, the entire police papers in relation to the solitary crime i.e., Crime No.395 of 2018 was available with the detaining authority. It would be groundless if it were to be stated that involvement in the solitary occurrence of this nature is itself sufficient to satisfy the yardsticks to hold that there is subjective satisfaction of the detaining authority.

9. We are, therefore, of the view that the impugned order is one passed without duly considering and applying the definition of the term 'acting in any manner prejudicial to the maintenance of public order' in clause (a) of Section 2 of the Act. The aforesaid facts show that the impugned order is vitiated by non-application of mind. Hence, it is to be treated as arbitrary, illegal and violative of the legal principles.

10. Beyond the aforesaid is the fact that the final report was not available even in the case of such nature, at least within a

period of 90 days, one may wonder as to how the progress of investigation for the offences punishable under the provisions of the POSCO Act and similar offences is being carried forward. May be it could also be a case where the investigation would ultimately come out with requisite final report in accordance with law. This way also we are sure that the impugned detention order ought not to have been passed on solitary instance, which is attributed to the detenu.

11. We hasten to add that the contents of this order will not be considered for any purposes during the course of the prosecution of the criminal case of which reference is made to in this writ petition.

12. In the result, the Writ Petition is allowed and the impugned detention order *vide* No.35/PD/CCRB/CYB/2018 dated 28.09.2018 passed by the second respondent is quashed. The *detenu viz.*, Dappu Santhosh Kumar is directed to be released from the detention forthwith, if he is not required in any other case or crime.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 15.03.2019
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