HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.43017 OF 2018

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

This Writ Petition is filed for issue of Habeas Corpus directing the respondents to release the petitioner's friend viz.,Rajamahendrapu Krishna, S/o.late Machaiah (for short 'the detenue') from detention after quashing the detention order passed by respondent No.2 vide SB(I) No.101/PD-1/HYD/2018, dated 28-09-2018 under Sub-section (2) of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Forest Offenders, Gaming Offenders, Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act 1986 (Act No.1 of 1986) (for short 'the Act of 1986').

2. The petitioner is the friend of the detenue. Since the detenue was involved in several offences, the detaining authority i.e., 2nd respondent-Commissioner of Police, after having satisfied with the material placed before him, passed detention order on 28.09.2018 holding the detenue to be a 'While Collar Offender' noticing his involvement in several

criminal cases. Aggrieved by the same, the petitioner herein filed the present habeas corpus petition before this Court.

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. We have heard Sri Challa Dhanamjaya, learned counsel for the petitioner and learned Government Pleader for Home appearing for respondents.

5. Learned counsel for the petitioner after taking us through the detention order dated 28.09.2018, submitted that the detaining authority has not made out a case for arriving at subjective satisfaction and that no material is placed before the detaining authority for passing preventive detention order against detenue. He further submitted that though the detenue was enlarged on conditional bails, without considering the said aspect, the detention order was passed, which is illegal. In support of his contention, he relied on the judgment of this Court in WP No.38082 of 2018, dated 18.02.2019. He further submitted that none of the offences alleged against detenue will come under the definition of Section 2(x) of the Act 1 of 1986.

6. On the other hand, learned Government Pleader for Home appearing for respondents while taking us through the grounds of detention, submitted that the detenue involved in four criminal cases during the year 2018 and same were considered as grounds of his

detention. He submitted that the cases registered against him would show that he is a habitual offender and that he has been committing offences, which are creating fear and panic among the general public and that the detenue is acting in a manner prejudicial to the public order, as such, the 2nd respondent, considering the gravity and nature of offences committed by the detenue, rightly passed order of detention on 28.09.2018.

7. Before considering the rival contentions of both parties, it is relevant to refer the definition of 'White Collar Offender' as described in the Act of 1986.

> "2 (x) "White collar offender" or "Financial Offender" means a person who commits or abets the commission of offences punishable under the Telangana Protection of Depositors of Financial Establishment Act, 1999 or under sections 406 to 409 or 417 to 420 or under Chapter XVIII of the Indian Penal Code, 1860]."

8. The Act of 1986 was enacted by the State in order to prevent certain persons from dangerous activities which are prejudicial to the maintenance of public order.

9. We have carefully considered all the relevant materials and considered rival contentions. With regard to the first submission that no case is made out for arriving at subjective satisfaction by the detaining authority for preventive detention of detenue by invoking the provisions of the Act of 1986, is contrary to the facts and equally untenable in view of the material placed before us. A perusal of the impugned detention order dated 28.09.2018 passed by the 2nd respondent goes to show that

the detenue is a habitual offender indulging in a series of offences of cheating by offering bribe forcibly to the officials of the Commercial Tax Department in the limits of Hyderabad Police Commissionerate, which is evident from the fact that four criminal cases registered against him viz., 1) Cr.Nos.4/RCT-ACB-CR1/2018 under Sections 8 & 9 of Prevention of Corruption Act, 1988, Section 66 D of Income Tax Act, 2008 and Sections 419, 420, 120 (B) IPC r/w 34 IPC of ACB, City Range-1 PS, Hyderabad; 2) Cr.No.67/2018 under Sections 419, 420, 384 IPC of Panjagutta Police Station; 3) Cr.No.35/2018 under Section 384, 419, 420 IPC of Abid Road and 4) Cr.No.38/2018 under Sections 419, 420 & 384 of IPC of Malakpet Police Station, Hyderabad. It is also found in the impugned detention order that the detenue along with his associates were involved in cheating by offering bribe forcibly to the officials of Commercial Tax Department posing themselves as officials of ACB under guise of dropping further action against them for the alleged accepting bribe, extorted huge amounts and thus cheated them in an organized manner and shared the money collected from them. The detenue along with associates were arrested on 29.01.2018 in Cr.No.4/RCT-ACB-CR1/2018 of ACB, City Range-1 Police, Hyderabad. The detaining authority has considered each crime registered against detenue, his *modus operandi* and linked the evidence against him to the crimes, besides recovering material objects viz., cash, Bank Debit cards, Bank Cheque Book, Aadhar card, coolpad mobile phone etc., from the possession of the detenue. 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. 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. 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 'White Collar Offender' within the meaning of Section 2(x) 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, cannot be accepted.

10. 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]**).**

11. It is next contended by the learned counsel for the petitioner that though the detenue was granted conditional bail, the same was not considered by the detaining authority while passing the impugned detention order, as such, the same is liable to be set aside. A perusal of the impugned detention order goes to show that the detenue was granted bails in four cases and subsequently he was released on bail. Learned counsel for the petitioner contended that the detenue was enlarged on a conditional bail and the detenue was directed to attend the office of the Deputy Superintendent of Police, Anti-Corruption Bureau, Hyderabad, on every alternate day, but the fact of granting of conditional bail is not considered by the detaining authority while passing the impugned detention order. Admittedly, the condition imposed in the bail order was not even referred to in the impugned detention order, except referring to orders passed in bail applications. Though the detenue was granted conditional bail, respondent No.2 has failed to consider the said conditions.

12. In ***M.Ahamedkutty v. Union of India***[2] and ***Union of India v. Paul Manickam***[3], the Supreme Court held that if the detaining authority is not in awareness of the relevant conditions in the bail orders, the

[1] (2012) 4 Supreme Court Cases 699
[2] (1990) 2 SCC 1
[3] (2003) 8 SCC 342

detention order is liable to be quashed on the ground of non-application of mind and improper satisfaction. This is for the reason that if the conditions of bail are effective enough to prevent the detenue from indulging in offences in future, there would be no need for the detaining authority to invoke the provisions of the Preventive Detention Act, 1950, which is an exception to Articles 19 and 21 of the Constitution of India.

13. Following the aforesaid judgments, Division Bench of this Court in WP No.32398 of 2018, passed order dated 09.11.2018 setting aside the detention order. In the light of the law laid down by the Supreme Court in the judgments referred to supra, the impugned detention order is liable to be set aside.

In the result, the Writ Petition is allowed. Impugned Detention Order, vide SB(I) No.101/PD-1/HYD/2018, dated 28.09.2018 of respondent No.2, is set aside. The detenue viz., Rajamahendrapu Krishna, S/o.Late Machaiah, is directed to be released from the detention forthwith, if he is not required in connection with any other case(s). However, it is open for the detaining authority-2nd respondent to consider the conditions mentioned in bail orders and pass orders in accordance with law.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

25th March, 2019
kvs

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.43017 OF 2018

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

Date: 25th March, 2019

kvs