

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.44011 OF 2018

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

We have heard learned counsel for the petitioner and learned Special Government Pleader for the State of Telangana.

2. This Writ Petition is instituted challenging a preventive detention order issued under Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Documents Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (Act No.1 of 1986) (for short 'PD Act').

3. The learned counsel for the petitioner argued that the impugned detention order is founded only on a sole prejudicial activity, which is a single incident, though different penal provisions are put against him in that one case. He further argued that in the said criminal case, the detenu was granted bail on 09.07.2018 and the preventive detention order, which is impugned in this writ petition,

was issued on 08.10.2018. It is further argued that there is no prejudicial activity attributed to the detenu after his release on bail in the criminal case and there is absolutely no reason to apprehend that he will involve in any activity, which fall under Clause (g) of Section 2 read with other relevant provisions of the PD Act.

4. Per contra, the learned Special Government Pleader argued that facts of the criminal case in which the detenu stands charged would show that there is a caste based substratum for the activity, which resulted in killing of a college boy. He also argued that such incidents create a sense of fear and terror in the minds of local public.

5. We have read the detailed preventive detention order. It elaborately describes the matter in relation to the sole incident, which is Crime No.226 of 2018 of Kukatpally Police Station, Ranga Reddy District. The detaining authority has concluded in the detention order that the activities relating to that incident would show involvement of the detenu in the gruesome and brutal murder of a scheduled caste boy in daylight on the main road of National Highway No.65 and in the presence of heavy traffic commuters affecting public order in the limits of Cyberabad Police Commissionerate with an intention to create terror. The consequences of the incident unravelled in the course of investigation of criminal case are also a part of the detention order. May be that, a particular situation of the one that happened on the particular day of the incident would have been gruesome, it would have been brutal, it is stated to have been a

murder, the victim is stated to have been a member of the scheduled caste, there would have been commotion, there would have been fear and terror created in the minds of the local public in that place at that point of time. If that speaks time centric and place centric relating to that incident, it is to be stretched as a continuing link for the purpose of keeping it live. For the purpose of issuing a preventive detention order, there has to be sufficient activity and continuity for reasonable foundation to apprehend threat or danger to public order or law and order; either way. The solitary incident led to the arrest of the detenu covered by the impugned detention order is the first cause. In the criminal case, as already noted, he was enlarged on bail on 09.07.2018. No prejudicial activity of any manner is attributed to him till passing the detention order, which was issued only on 08.10.2018 i.e., nearly more than three (3) months after his release on bail on conditions. Therefore, the satisfaction expressed in the detention order is only the subjective satisfaction that as on the date of the incident, which led to the criminal case, there was a sense of terror probably created or available in the scene of occurrence; that cannot be adverted to as one that would continue to give a live link to be available as and when the detention order was issued. There is also no possibility shown in the detention order that the detenu would indulge in further prejudicial activities. This is, particularly, because no prejudicial activity is even attributed to him after his release on bail. The assumption that he could indulge in prejudicial activity in future is, obviously, not founded on any live link that can be seen as

available to form foundation for a preventive detention order under Section 2(g) of the PD Act.

6. For the aforesaid reasons, the impugned order has been issued in excess of the authority under the Act and is, therefore, violative of Article 14 apart from Article 21 of the Constitution.

7. In the result, the Writ Petition is allowed and the impugned preventive detention order in proceedings No.36/PD/CCRB/CYB/2018, dated 08.10.2018 of respondent No.2, as confirmed by respondent No.1 *vide* G.O.Rt. No.2858 dated 22-12-2018, is quashed. The *detenu* viz., Jilla Mahesh, son of Hanmanth Rao, shall be set at liberty forthwith from the detention, if he is not required in connection with any other case.

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

March 19, 2019.

NOTE:

Advance Order already sent.

PV / SUR