

IN THE HIGH COURT FOR THE STATE OF TELANGANA

* * * * *

WRIT PETITION NO.44184 OF 2018

Vem Narender Reddy

.. Petitioner

Vs.

State of Telangana,
Rep. by its Principal Secretary,
Home Department,
Secretariat, Hyderabad
and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 11.03.2019

SUBMITTED FOR APPROVAL:

*** HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
* HONOURABLE SRI JUSTICE T. AMARNATH GOUD**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAGHVENDRA SINGH CHAUHAN, J

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.. Respondents

! Counsel for the Petitioner: Sri C.V.Mohan Reddy,
Senior Counsel for Sri T. Rajinikanth Reddy.

^ Counsel for the respondents: Advocate General
for the State of Telangana

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.44184 of 2018

ORDER: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

The present Habeas Corpus Writ Petition has been filed by Mr. Vem Narender Reddy, a close associate and family friend of Mr. Anumula Revanth Reddy, an Ex-MLA and a contesting candidate from the Kodangal Assembly Constituency, Vikarabad District, in the General Elections for the Legislative Assembly-2018, which were underway at the time of filing of the habeas corpus petition. Mr. Reddy is also the Working President of Telangana Pradesh Congress Committee. According to the petitioner, on 04.12.2018, at about 2:40 a.m., Mr. Anumula Revanth Reddy was suddenly picked up by the police, and taken to an unknown destination. Therefore, the petitioner not only seeks a direction from this court for the production of the detenu before this court, but also prays that the State should be directed to pay a compensation of Rs.20.00 lakhs to Mr. Reddy for the violation of his fundamental right under Article 21 of the Constitution of India.

Briefly, the facts of the case are that Mr. Anumula Revanth Reddy was an M.L.A. from the Kodangal Assembly Constituency, Vikarabad District, for two consecutive terms. Since he would raise his voice against the ruling party for the public cause, he became a very popular political leader in the state. During the assembly elections, scheduled to be held on 07.12.2018, he was appointed as the Working President of the Telangana Pradesh Congress Committee.

During the period of election campaigns, on 27.11.2018 about 3:30 p.m., a team of officers raided the farm-house of one Mr. Patnam Narender Reddy, a contesting candidate of the Telangana Rashtra Samithi (TRS) Party from the Kodangal Constituency. During the raid, the police seized cash worth Rs.51.00 lakhs, and a note book which contained cash transactions relating to distribution of monies for the ensuing assembly elections. In the light of the said incident, on 03.12.2018, Mr. Reddy, the detenu, sent a complaint to the Election Commissioner and to the Chief Electoral Officer-cum-Principal Secretary to Government GA (ELECS) Department, Telangana Secretariat, Hyderabad. He demanded that Mr. P. Narender Reddy should be disqualified from contesting the elections as he had violated the Model Code of Conduct and the Election Laws.

Allegedly, as a counter-blast, the police also conducted raids on 01.12.2018, at midnight, in the houses of those who are close associates of Mr. Reddy, and local leaders of the Congress Party. Immediately, on 01.12.2018, the detenu staged a *dharna* in support of his close associates and local leaders, whose houses were raided in the night. The detenu also called for a *bandh* (protest) on 04.12.2018. Moreover, on 02.12.2018, the detenu held a press conference and warned that supporters of the Congress Party would disrupt the campaign rally at Kosgi, scheduled for 04.12.2018, where the Caretaker Hon'ble Chief Minister of the State was to address the people.

Without serving any notice, suddenly, in the night of 03.12.2018, around 2:45 a.m., thirty to forty personnel broke

through the main gate of Mr. Reddy's house. They entered into the house, they broke the bedroom door, and whisked away Mr. Reddy at the dead of the night. Hence, this habeas corpus writ petition before this court.

Mr. C.V. Mohan Reddy, the learned Senior Counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, during the relevant period, the detenu was spearheading the campaign for the assembly elections on behalf of the Telangana Pradesh Congress Party. Since the election was a hotly contested one, the state machinery has been abused by the State in order to ensure that the Congress Party does not come into power. Therefore, the state machinery has been utilized for oblique and ulterior motives.

Secondly, both as a citizen and as a political leader, the detenu has the right to express both his personal opinion, and the public views, at the election rallies. The right to champion the public cause arises from different Articles of Part-III of the Constitution of India. Hence, by illegally detaining the detenu, the respondents are violating his fundamental rights under Articles 14 and 21 of the Constitution of India.

Thirdly, the police does not have the power to enter into someone's house at the dead of the night, to break the gate, to break down the bedroom door, and to physically lift the detenu, and to whisk him away. Such an action, on the part of the police, is a paradigm example of the highhandedness of the police, and of the arbitrary use of power against an individual. Since the whereabouts of Mr. Reddy are unknown, he is being illegally detained by the police at an unknown place. Therefore, this Court

should not only direct the police to produce the body of the detenu, but also should direct the State Government to pay a compensation of Rs.20.00 lakhs to the detenu for having violated his fundamental rights under Articles 14, 19 and 21 of the Constitution of India.

On the other hand, Mr. Mukul Rohatgi, the learned Senior Counsel for the respondents, has vehemently raised the following counter-arguments before this Court:-

Firstly, the habeas corpus petition has been filed only on the basis of hearsay evidence. But hearsay evidence is no evidence in the eyes of the law. The only exceptions to the hearsay rule are under Section 6 and 32 of the Evidence Act. However, the contents of the habeas corpus petition do not fall within the principle of *res gestae*. Therefore, the writ petition should be dismissed on this ground alone.

Secondly, Kodangal Assembly Constituency is a hot-spot of political rivalry, and of political conflict. Therefore, it is highly sensitive area during the election period. Hence, the police has to be extra vigilant in order to ensure that law and order problems are not created at the beck and call of political leaders. After all, it is the duty of the Election Commission and the duty of the State to ensure that free and fair elections are held throughout the State. For, only free and fair elections guarantee the rule of law and of democracy. Hence, it is imperative for the police to nip the bud of any incident, any threat, any possibility, which may flare up into a political conflict, thereby endangering the peace and tranquillity of the society at large.

Thirdly, even on earlier occasions, Kodangal Assembly Constituency was subjected to political turmoil. Even during those periods, the detenu was preventively detained under Section 151 of the Code of Criminal Procedure ('the Code' for short).

Fifthly, on 12.11.2018, the Model Code of Conduct came into force. The detenu had sought permission from the Returning Officer, Kodangal Assembly Constituency for holding a public meeting of about 3,000 persons, on 19.11.2018, in front of his house. The permission was duly granted by the Returning Officer. However, on 19.11.2018, instead of a small gathering of 3,000 persons, a large assembly of 25,000 persons had assembled at the detenu's house. This fact not just proves that the detenu had violated the permission granted by the Returning Officer, but most importantly establishes that at the instant call of the detenu, a large number of people could be gathered. According to the learned Senior Counsel, the police may be able to tackle a small gathering of 3,000 persons, but the police may be caught off guard in trying to control a large crowd of 25,000 persons.

Sixthly, on 01.12.2018, the detenu had sat in a *dharna* (protest) against the raids made by the police at the houses of supporters of the Congress Party. At the *dharna*, he had given a call to the supporters of his political party to observe a *bandh* on 04.12.2018. Subsequently, on 02.12.2018, the detenu had not only issued a warning, but had used threatening words against the Caretaker Hon'ble Chief Minister. He had clearly stated that the detenu's supporters would disrupt the assembly meeting, which the Caretaker Hon'ble Chief Minister would be addressing on 04.12.2018 at Kosgi.

Seventhly, a series of F.I.Rs. were registered against the detenu, namely FIR No.133 of 2016 filed by Mr. K. Srinivas Chary at Bomraspet Police Station on 02.12.2018 for offences under Sections 188, 290, 341 r/w. 34 IPC; FIR No.202 of 2018 filed by Mr. K. Jithender at Kodangal Police Station for the offences under Sections 188, 290, 341 r/w. 34 IPC; FIR No. 203 of 2018 filed by Mr.K. Laxman Naik (Sub-Inspector of Police) at Kodangal Police Station for the offences under Sections 188, 341, 506 r/w. 511 IPC; FIR No. 206 of 2018 filed by the Returning Officer, Kodangal at Kodangal Police Station for the offences under Sections 188, 505, 506 r/w. 511 IPC. These FIRs pertained to the threats held out by the detenu to disturb the scheduled election rally on 04.12.2018 at Kosgi.

Moreover, on 02.12.2018, Mr. M. Srinivas Reddy, the General Secretary, TRS Party had addressed a letter to the Chief Electoral Officer, Telangana State, bringing to his notice that the detenu is provoking the people of his constituency, and is calling for a *bandh* at Kodangal on 04.12.2018. He is threatening to disturb the meeting of the President of TRS Party, scheduled to be held on 04.12.2018 at Kosgi. A copy of this letter was sent to the Director General of Police by the Chief Electoral Officer, Telangana State. Along with the letter, a copy of video recording of the detenu's speech was also enclosed. The Chief Electoral Officer informed the Director General of Police that the General Secretary, TRS Party is requesting that "all necessary measures" should be taken in order to ensure that there is no disruption of the political gathering scheduled to be held in the Kodangal Constituency. The Chief Electoral Officer also directed the Director General of Police

to submit a report of the action taken by the Police by 03.12.2018. Immediately, on 03.12.2018, the Office of the Director General of Police sent a Memorandum to the Superintendent of Police, Vikarabad District requesting her *“to take the necessary action”* and to furnish the action taken report to the “Chief Office” immediately. According to the learned Senior Counsel, the “Chief Office”, mentioned in the letter, is the Office of “the Chief Electoral Officer”.

In order to discover the reality at the gross-root level, the Superintendent of Police, Vikarabad District had directed the Inspector, Special Branch, Mr. Y. Nagesh to gather the relevant information with regard to any possible disruption that may be caused on 04.12.2018. Mr. Y. Nagesh had submitted certain reports clearly pointing out that there is distinct possibility of disruption carried out by the supporters of the detenu. These reports submitted by Mr. Y. Nagesh have also been submitted before this Court.

Furthermore, on 03.12.2018, the Returning Officer also requested the Sub-Divisional Police Officers, Parigi & Narayanpet that keeping in mind, the threat and provocation given by Anumula Revanth Reddy, the Police is requested to take action of *“all possible necessary steps”* to avoid break down of law and order in Kodangal Assembly Constituency, and *“if necessary, initiate action as per the Representation of Peoples Act and the IPC, and to report the compliance by 04.12.2018 at 5:00 p.m.”* Keeping in mind the directions received from the Office of the Director General of Police, keeping in mind the directions received from the Returning Officer, the Police had no other option, but to take

appropriate action against the detenu in order to prevent the breach of law and order, and the possible disruption of the political gathering scheduled to be addressed by Caretaker Hon'ble Chief Minister on 04.12.2018.

Eighthly, on 03.12.2018, the Returning Officer, Kodangal had also addressed a letter to Mr. Anumula Revanth Reddy advising him "to withdraw his statement and to desist from resisting/obstructing or disrupting any political meeting". He was also forewarned that, "if he does not desist from disrupting, action will be initiated against him." But despite the request made by the Returning Officer, the detenu never called off the *bandh*, which he had announced for 04.12.2018.

Lastly, Section 151 of the Code empowers a Police Officer to arrest a person without orders from a Magistrate, or without a warning, if the Police Officer knows of a design with regard to commission of a cognizable offence and if it appears to such an Officer that the commission of the offence cannot be prevented otherwise. Considering the threat given by the detenu, considering his ability to gather a large crowd, considering tangible possibility that law and order problem may erupt, the police had no other option, but to exercise its power under Section 151 of the Code. It is while exercising this power that the police personnel had entered the house of the detenu at night, and arrested him under Section 151 of the Code. Therefore, the detention is not an illegal one. Since the police was trying to maintain law and order, to prevent the occurrence of an untoward incident, and to ensure that other political parties can equally exercise their right to hold election campaigns peacefully, the exercise of power under Section

151 of the Code is neither *mala fide*, nor suffers from an oblique motive. Moreover, since the detenu was released at 5:00 p.m. on 04.12.2018, the habeas corpus petition no longer survives. Hence, it should be dismissed by this Court.

In rejoinder, the learned counsel for the petitioner has pleaded as under:-

Firstly, Section 151 of the Code requires that the Police Officer should be satisfied that there is no other means to prevent the occurrence of a cognizable offence, than to detain a person. Such a satisfaction has to be recorded and informed to the superior officers. However, such a satisfaction has never been recorded by the Superintendent of Police, Vikarabad District.

Secondly, although the detenu threatened on 02.12.2018 that a *bundh* would be observed, on 03.12.2018, he had again held a press conference, and announced to the people that “no *bundh* would be observed”, but “merely a protest will be allowed against the highhandedness of the police in needlessly raiding and harassing the people of the Congress Party”. Therefore, the learned counsel for the respondents is not justified in claiming that the detenu did not call off the proposed *bandh* on 04.12.2018.

Thirdly, by letter, dated 02.12.2018, addressed by the Superintendent of Police, Vikarabad District to the District election Officer & Collector, Vikarabad a request was already made that the ban contained under Section 144 of the Code should be promulgated at Kodangal, Bomraspet and Doultabad Mandals of the Kodangal Assembly Constituency. In response to the said letter, the District Election Officer had directed the Revenue Officer-cum-Tahsildar to promulgate Section 144 of the Code for

3rd and 4th of December, 2018. By order dated 02.12.2018, the ban under Section 144 of the Code was put in place for 3rd and 4th of December, 2018 at Kodangal, Bomraspet and Doultabad Mandals of the Kodangal Assembly Constituency. Hence, sufficient steps were taken by the police to ensure that no untoward incident would occur on 04.12.2018. Therefore, the police had no reason whatsoever for arresting and detaining the detenu under Section 151 of the Code.

Fourthly, the alleged reports submitted by Mr. Y. Nagesh, Inspector, Special Branch, are fabricated documents by the police. For, the reports neither bear any date, nor any seal of the Inspector, Special Branch, nor the seal of the Police Office, where the reports were received. Therefore, according to the learned Senior Counsel, a serious view should be taken by this Court against the respondents for submitting forged documents.

Fifthly, even the report submitted by the Superintendent of Police, Vikarabad District, dated 03.12.2018 to the Director General of Police, does not mention any report received by her from Mr. Y. Nagesh. This also proves that the reports allegedly submitted by Mr. Y. Nagesh are fabricated documents as an afterthought to defend the position of the respondents against the habeas corpus petition.

Sixthly, according to Section 50-A of the Code, at the time of arresting a person, the police is under a legal obligation to give information regarding such arrest and place where the arrested person is being held, to any of the friends or relatives of such arrested person, or to any such other person as may be disclosed or nominated by the arrested person. Despite the fact that the

detenu was arrested in his house, no notice whatsoever was given either to his wife, or to any of his relatives, or friends under Section 50-A of the Code. Therefore, the detention is an illegal one.

Lastly, although the detenu was released on 04.12.2018 in the evening, even then, it is imperative for this Court to pass a detailed order in this habeas corpus petition. For, the State cannot be permitted to arbitrarily and unfairly pick up a person in the dark hours of the night, and to detain him at an unknown place. Considering the fact that the detenu is the Working President of the Congress Party, a national political party, the action of the State should be deprecated by this Court in the harshest terms. Moreover, since the fundamental rights of the detenu have been trampled upon by the State, the State should be directed to pay an exemplary compensation of Rs.20.00 lakhs to the detenu.

In reply to the rejoinder, Mr. Mukul Rohatgi, the learned Senior Counsel has pleaded that, *firstly*, some of the reports submitted by Mr. Y. Nagesh are dated. In fact, there is a reference to such a report, in the report submitted by the Superintendent of Police, Vikarabad District to the Director General of Police. Therefore, the learned counsel is unjustified in claiming that these reports have been fabricated as an afterthought by the respondents.

Secondly, since the detenu's wife had refused to accept a notice under Section 50-A of the Code, a notice under the said Section was given to Mr. Kosgi Anji, a close associate/friend of the

detenu. Therefore, the police force had complied with the requirements of Section 50-A of the Code.

Lastly, since the detention was a legal one, the question of payment of compensation to the detenu would not even arise.

Heard the learned Senior Counsel for the parties and critically examined the record available with the Court.

It is true that the detenu was released on 04.12.2018, in the evening at 5:00 p.m., therefore, this habeas corpus petition should be dismissed as infructuous. However, as the petitioner insists that the issue of payment of compensation should be decided by this Court, it is imperative for this Court to decide this case on merits.

Therefore, the three issues before this Court are:-

Firstly, whether the detention of the detenu can be said to be illegal even on the day when he was taken away by the police or not?

Secondly, whether the respondents are justified in invoking their power under Section 151 of the Code in order to preventively arrest the detenu or not?

Thirdly, whether the detenu is entitled to grant of any compensation for the alleged violation of his Fundamental Right or not?

Section 151 of the Code is contained in Chapter-XI of the Code, which deals with “Preventive Action by the Police”. Section 149 of the Code empowers the police to interpose for the purpose of preventing and imposes a duty on the police to prevent a commission of any cognizable offence. Section 150 of the Code further enjoins a police officer, who receives any information with

regard to a design to commit any cognizable offence, to communicate such information to the police officer, to whom, he is subordinate, and to any other officer whose duty it is to prevent and to take cognizance of the commission of any such offence. Section 151 of the Code is as under:-

151. Arrest to prevent the commission of cognizable offences:

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub- section (1) shall be detained in custody for a period exceeding twenty- four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force. (Emphasis added).

It is, indeed, trite to state that, in law, different expressions have been used having varying nuances: “*it appears*”, “*is of the opinion*”, “*reason to believe*” and “*is satisfied*”. All these words have different connotations, but deal with the phenomenon of an authority reaching a conclusion. Whereas, the words “*it appears*” implies that “*an impression is created*” while keeping in mind the overall facts and circumstances, the words “*is of the opinion*” connote either a subjective or an objection opinion. But even a subjective opinion has to be based on objective materials. The words “*reason to believe*” imply that there is rational connection with or relevant bearing on the formation of a belief. Rational connection postulates that there must be a direct nexus or live link

between the material coming to the notice of the person, and the formation of his belief, with regard to the existence or non-existence of a particular fact. Moreover, such a belief cannot be based on vague or incomplete information. “*Is satisfied*” is a conclusion which is firmly drawn on the basis of all the facts and circumstances. Therefore, of all these terms, the words “*it appears*” is lightest in its meaning.

Section 151 of the Code has purposefully used the words “*it appears*”. For, while trying to prevent a person from committing a cognizable offence, the probability that a cognizable offence is designed to be committed, is merely in the realms of possibilities. Such probability is based on various factors such as the conduct of the person in the past, the prevailing circumstances at the given moment, the consequences of the commission of a cognizable offence upon the society at large. Since a preventive measure needs to be taken by the police in order to pre-empt the commission of a cognizable offence, a wide latitude has given by use of the words “*it appears*”. Therefore, the words “*it appears*” merely require that “*an impression has to be formed*” in the mind of the police officer that a person has a design for committing a cognizable offence. Hence, his preventive arrest has become necessary. Therefore, the learned counsel for the petitioner is unjustified in claiming that not only “*a satisfaction has to be reached*”, but more importantly, it needs to be recorded and communicated to the superior officers.

Interestingly, Section 150 of the Code enjoins a police officer, who receives any information with regard to a design to commit any cognizable offence, to communicate the said information both

to his superior officers, and to his junior officers, who would be in a position to prevent the commission of such an offence. But it is merely a communication “*of information*”. *Prima facie*, there is no requirement that the “impression that a preventive action needs to be taken”, necessarily has to be communicated to the superior officer.

However, considering the fact that a drastic step affecting the liberty of a citizen is likely to be taken, even the impression gathered by the police officer, or the decision to make a preventive arrest should be communicated to the superior officers. After all, the power given under Section 151 of the Code is not an unbridled power which can be used at the whims and fancies of a police officer. Since the invoking of the power will drastically curtail the liberty of a person, thereby encroaching upon the sacred space of Article 21 of the Constitution of India, the said power has to be exercised extremely carefully, and under the supervision of the superior officers.

Therefore, the issue before this Court is “whether the Superintendent of Police, Vikarabad District had ample material to ‘form an impression’ that there is a design of the detenu to commit a cognizable offence or not?”

Admittedly, the detenu had sought a permission to hold a meeting in front of his house consisting of 3000 persons. After initial rejection, the respondents had granted the permission to the detenu to hold the said meeting on 19.11.2018 in front of his house. However, a large crowd of 25,000 had assembled in front of his house. This clearly demonstrates not just the popularity of the

detenu, but more so, his ability to gather a large crowd in a short spell of time.

Admittedly, on 01.12.2018, the detenu had sat in a *dharna*. On 02.12.2018, he had called a press conference. At the press conference, the detenu had vociferously threatened that the meeting scheduled on 04.12.2018 at Kosgi, to be addressed by the Caretaker Hon'ble Chief Minister, would be disrupted "*at any cost*". He had also called for a *bandh*. Therefore, he had incited his supporters to disrupt the public meeting. Considering the possibility of tempers running high, considering the possibility of clashes between the supporters of different parties may suddenly erupt, different public officers became cautious about the situation.

Admittedly, as mentioned above, FIRs were lodged by different persons at different Police Stations against the detenu for the offences under Sections 188, 290, 341 r/w. 34 IPC. A complaint was also registered by the General Secretary, TRS Party, with the Chief Electoral Officer, Telangana State with regard to the threats given by the detenu. The Chief Electoral Officer had immediately written to the Superintendent of Police, Vikarabad, to take "*all necessary actions*" under the law. Meanwhile, the Chief Electoral Officer had also written to the Director General of Police of the possibility of the threat being carried out by the detenu. Therefore, the Election Commissioner had also informed the Director General of Police of the possible threat to law and order. In turn, on 03.12.2018, the Office of the Director General of Police had sent written Memorandum to the Superintendent of Police, Vikarabad District "to take all necessary action" to prevent the

breakdown of law and order. Although the learned counsel for the petitioner claims that on 03.12.2018, the detenu had called off the *bandh*, but nonetheless, he had vowed to continue “the protest”. It is needless to enter into semantics of the difference between a “*bandh*” and a “protest”, but suffice it to say that even “a protest” carried out in the heat and dust of an election period can spark of conflicts and clashes which would threaten the peace and tranquillity of the area. Considering these different aspects, the Superintendent of Police, Viakarabad, was justified in gathering an impression that the law and order situation may deteriorate at any moment, at any time, and at any place. Although it is true that upon her request, the Tahsildar-cum-Execute Magistrate, Kodangal had promulgated the ban under Section 144 of the Code, but merely because the ban had been imposed on 03.12.2018 and 04.12.2018, there is no guarantee that such a ban would be respected by the people at large. Therefore, the police could not have rested its oars only on the basis of promulgation of Section 144 of the Code. Needless to say, the police is expected to be vigilant during the hypercharged atmosphere of an election. It is legally bound to prevent the violation of law by any and every person, no matter of how high the person may be. Therefore considering the situation which existed in the Kodangal Assembly Constituency, between the 01.12.2018 and 04.12.2018, considering the possible eruption of disturbances on 04.12.2018, the Superintendent of Police, Vikarabad was justified in invoking her powers under Section 151 of the Code.

Although in the calm and cool environs of a court of law, it is possible for the learned counsel for the petitioner to argue that the

police should not have entered the detenu's house at the dead of the night, only to whisk him away, but this court possibly cannot sit over the methodology applied by the police in order to prevent the detenu from carrying out his threats. For, this court does not sit as an appellate court over the decision of the public authority. Mr. Mukul Rohatgi is certainly justified in arguing that if a leader of a movement has to be taken away from the public view, it could not have been done in the public eye. Therefore, if the detenu were to be preventively arrested, it could not be either in the evening of the 3rd December, 2018, or in the early morning of 4th December, 2018, after sunrise. If he were to be preventively arrested in full public view, between sunrise and sunset, a grave possibility does exist that his supporters would have clashed with the police. Such a clash may have led to casualties on both the sides. Therefore, in order to prevent a mob from wrecking its wrath on the police, the police thought it reasonable to preventively arrest the detenu at night.

The learned counsel for the petitioner has strenuously argued that even if the detenu had to be arrested, it should not have been done by breaking the gates, by breaking down the door of the bedroom. Such actions clearly show the highhandedness of the police. However, Mr. Mukul Rohatgi submits that the police had asked the detenu to come out of the house, but instead of coming out of the house, he had unleashed two of his dogs upon the police force. He further submits that despite the repeated knocks on the doors of the bedroom, the detenu and his wife did not open the doors. Therefore, the police merely nudged the door, and the door flung open.

The learned counsel for the petitioner has also emphasised the fact that no notice was given by the police under Section 50-A of the Code, either to the wife of the detenu, or his other relatives, who were present in the house. Therefore, the mandatory requirement of Section 50-A of the Code has been violated by the police. On the other hand, the respondents have produced a copy of the notice given by the police to Mr. Kosgi Anji, a close associate and family friend of the detenu. Although Mr. Mukul Rohatgi, the learned Senior Counsel claimed that since the detenu's wife had refused to accept the said notice, the police had given the notice to Mr. Kosgi Anji, this fact is not reflected in the notice produced before this court. In fact, in the rejoinder, Mr. C.V. Mohan Reddy, the learned Senior Counsel submits that the detenu does not know any person by the name of Mr. Kosgi Anji. However, these arguments and counter-arguments are based on facts, whose veracity cannot be commented upon by this court in its writ jurisdiction as it is a disputed question of fact.

Although the police may be justified in invoking its power under Section 151 of the Code, it is imperative for the police to realise the consequences of its acts. For, at times, even though the actions of the police may be legally justified, nonetheless, the actions may have certain serious consequences in the society at large. For, people may be convinced that the police is dancing to the tunes of the powers that be, that the police has started unleashing a reign of terror, and is committing shocking atrocities on the people. Such an impression is bound to undermine the respect for the authorities, is bound to dilute the faith of the people in the rule of law, thereby threatening the entire political edifice,

and thereby threatening the edifices of democracy in the country. Hence, it is essential that before exercising a power, even legitimately, a serious thought should be given especially with regard to the method of exercise of the power. Needless to say, the more vast a power, the more carefully and sparingly it should be used. Therefore, the power to prevent a person from carrying out his designs to commit a cognizable offence should be exercised in exceptional cases.

Of course, the respondents are justified in exercising the said power, as exceptional circumstances did exist in the Kodangal Assembly Constituency between the 1st December, 2019 and 4th December, 2019. However, the method of exercising the power is a bit concerning. For, giving a notice under Section 50-A of the Code is not a mere formality to be performed. It is a serious step to be taken for safeguarding both the interests of the person arrested, and for protecting the reputation of the police. Therefore, the notice should contain all the essential facts, rather than, being hurriedly written in a cryptic manner.

Much has also been made with regard to the report submitted by Mr. Y. Nagesh. At the first blush, even this court was convinced that such a report may be fabricated in order to create an impression that there was “sufficient reason” for the Superintendent of Police, Vikarabad District to preventively detain the detenu. But a deeper examination of the record clearly reveals that the action has not been taken only on the basis of the reports submitted by Mr. Y. Nagesh. In fact, there is overwhelming evidence in the form of FIRs, complaint written by the General Secretary, TRS Party, the request made by the Chief Electoral

Officer to the Director General of Police, the directions issued by the Director General of Police to the Superintendent of Police, Vikarabad District for taking “*all the necessary actions*”, the promulgation of Section 144 of the Code by the Executive Magistrate-cum-Tahsildar, Kodangal Mandal. Therefore, considering these overwhelming evidence, which clearly justify the invoking of power under Section 151 of the Code, the reports submitted by Mr. Nagesh pale into insignificance.

Even otherwise, in her report, dated 04.12.2018, submitted by the Superintendent of Police, Vikarabad District to the District Election Officer and Collector, she states that “*it has come to her notice that Mr. Anumula Revanth Reddy and his followers of the Congress Party will resort a Law and Order problem and provoke the public in the meeting at Kosgi.*” These sentences may refer to the reports, she has received from Mr. Nagesh, which have been produced before this Court. Moreover, the threat held out by the detenu at a press conference was no secret. For, even in the letter dated 02.12.2018 addressed by the Superintendent of Police, Vikarabad District to the District Election Officer and Collector, she had mentioned the fact that the detenu had held a press conference on 02.12.2018 and provoked the public with his speech and called for a protest and directed his followers to obstruct the public meeting of the Caretaker Chief Minister of Telangana, scheduled to be held on 04.12.2018 at Kosgi of Kodangal Assembly Constituency. She had, in fact, requested the District Election Officer to promulgate Section 144 of the Code at Kodangal, Bomraspet and Doultabad Mandals of the Kodangal Assembly Constituency. It is upon her request that the District Election

Officer had immediately directed the Revenue Officer “to take immediate action as requested”. Consequently, by order dated 02.12.2018, the Executive Magistrate-cum-Tahsildar, Doultabad Mandal, Vikarabad District did promulgate Section 144 of the Code. Similarly, the Executive Magistrate-cum-Tahsildar, Kodangal Mandal also promulgated Section 144 of the Code for 03.12.2018 and 04.12.2018. Therefore, the alleged reports of Mr. Y. Nagesh, Inspector, Special Branch are unimportant for the decision of this case. Since the respondents had legally and validly invoked their power under Section 151 of the Code, preventive arrest of the detenu cannot be held to be an illegal one.

Since the detention is not an illegal one, the question of violation of fundamental rights of the detenu would not even arise. Therefore, detenu is not entitled to claim any compensation from the respondents.

For the reasons stated above, this Court does not find any merit in the present habeas corpus petition.

In the result, the Writ Petition is, hereby, dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T. AMARNATH GOUD, J)

11th March, 2018

Note: Registry shall return the original records to the Director General of Police, State of Telangana with due acknowledgement.

(B/o.)
Tsr

