

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY ,THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY**

WRIT PETITION NO: 8085 OF 2020

Between:

Dharavath Nagendra Naik, W/o Lingaiah, Aged about 20 years, Occ. Student,
R/o H. No. 5-69, Padu Naik Thanda, Duraj Palli, Nalgonda District, Telangana State.

...PETITIONER

AND

1. The State of Telangana, Rep by the Principal Secretary, Home Department,
(POLL), Secretariat building, At Hyderabad.
2. The Director General of Police, At Hyderabad
3. The Commissioner of Police, At Cherlapally

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue order or direction more particularly one in the nature of writ of Habeas Corpus by declaring the action of the respondent No.1 in issuing the detention order vide G.O.R.T.No.898 dated 16/05/2020 basing on the orders passed by the 3rd Respondent Vide No.14/PD-CELL/CCRB/RCKD/2020 dated 20/03/2020 by directing detention of Daravath Vamshi Naik S/o Lingaiah for a period of 12 months from 20/03/2020 detained in Central Prison Cherlapally, as illegal and unconstitutional and to set him free.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order of Respondent No.1 vide G.O.RT No. 898 dated 16-05-2020, direct to produce the body of Detenue Daravath Vamshi Naik, S/o Lingaiah detained in Central Prison Cherlapally, before this Hon'ble Court.

Counsel for the Petitioner: SRI. ARUN KUMAR MUDI

Counsel for the Respondents: SRI T. SRIKANTH REDDY, GP FOR HOME

The Court made the following: ORDER

ORDER: (Per Hon'ble Sri Justice B. Vijaysen Reddy)

The detention order vide 14/PD-Cell/CCRB/RCKD/2020, dated 20.03.2020 passed against Dharavath Vamshi Naik, S/o. Lingaiah, by the 3rd respondent, Commissioner of Police, in exercise of powers conferred 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, 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 (Amendment Act No.13 of 2018) (for short 'the Act') and as confirmed by the State vide G.O.Rt.No.898, General Administration (SPL) Law & Order Department dated 16.05.2020, are challenged in this Writ of Habeas Corpus as being illegal and arbitrary.

2. Heard Mr. Arun Kumar Mudi, learned counsel for the petitioner and Mr. T. Srikanth Reddy, learned Government Pleader for Home for the respondents.

3. The learned counsel for the petitioner submitted that the impugned detention order is passed without application of mind and the detenu can be dealt with under ordinary law. The detention order was passed mechanically based on solitary offence and there is no material to come to a conclusion that detenu has been acting in a manner prejudicial to maintenance of public order and disturbing the peace and tranquility.

4. *Per contra*, the learned Government Pleader submitted that the detenu was involved in Crime No.26 of 2020 under Section 20 (ii) (B) of NDPS Act, 1985 of Ghatkesar P.S. He was found to be in possession of 51 kgs., of Ganja packed in (47) packets and net cash of Rs.4,500/-, and the same were seized. After having completed recovery, he was produced before the concerned Court and sent for judicial remand on 17.01.2020. The contraband seized from the detenu would be highly dangerous to the lives of youth and innocent people, causing irreparable damage to their body organs including the central nervous system, thereby crippling the mental and physical health of the people addicted to drugs. The detenu moved as many as four bail petitions before the MSJ, L.B. Nagar and the same were dismissed. Since the detenu squarely answers the description of 'Drug Offender' as defined under Section 2(f) of the Act and the activities of the detenu are likely to be prejudicial to the public health and public order, it was necessitated for the detaining authority to pass the impugned detention order.

5. In the impugned detention order, the detaining authority has referred to a solitary criminal case, which forms the basis of the detention order i.e. Crime No.26 of 2020 under Section 20 (ii) (B) of NDPS Act, 1985 of Ghatkesar Police Station. As found from the impugned order, the detenu moved four bail petitions before the Metropolitan Sessions Judge at L.B. Nagar and the same were dismissed.

6. The subjective satisfaction of the detaining authority in passing the impugned detention order is on the basis that the detenu would again move bail petition and soon to get bail and there are imminent possibilities of the detenu indulging in similar activities again immediately after his release from jail, which would be prejudicial and

detrimental to the maintenance of public order and public health at large. It is also stated in the impugned detention order that the detenu involved in several offences of peddling of narcotic drugs and as such, he was earlier detained under the provisions of Act No.1 of 1986 by Jangaon Police vide preventive detention orders C.No.497/WRC/CSB-XI/2019, dated 02.07.2019 of Commissioner of Police, Warangal. This P.D. order was challenged by the detenu before this Court in W.P. No.19310 of 2019 and the same was allowed vide order dated. 31.10.2019.

7. Grant of bail for the offences under NDPS Act is governed under the provisions of NDPS Act and under Section 37 of the NDPS Act, strict mechanism is provided and unless the concerned Court is *prima facie*, satisfied that the accused is not involved in commission of offence, bail, ordinarily, would not be granted. If the Police authorities feel that even after strongly opposing the bail, the concerned Court has granted bail, it is always left open for the authorities to move an application for cancellation of bail either before the same Court or higher Court. Without resorting to such steps, the State chose to invoke provisions of preventive detention law and this is nothing but arbitrary exercise of powers conferred under the preventive detention laws.

8. Section 37 of the NDPS Act deals with power of the Court for grant of bail. As compared to Section 439 Cr.P.C. whereunder there is no strict mechanism as to the specific grounds on which the bail has to be granted, under Section 37 of the NDPS Act, in ordinary circumstances, bail would not be granted by the Court, as the Court has to record a finding that the accused is not *prima facie* involved in commission of NDPS offence. The right to oppose a bail is given to the Public Prosecutor and it is needless to state that the Public Prosecutor

would place all relevant material/CD file before the concerned Court and also apprise the Court of relevant circumstances under which the detenu was arrested, the gravity of the offence, the quantity of drug seized etc. All these facts weigh with the concerned Court while granting bail.

9. The material available with the detaining authority, at the time of passing of the detention order is relevant to be taken into consideration for the purpose of assessing as to whether the detaining authority was apprised of all the relevant factors necessary for passing such order. However, the detaining authority has failed to take note of the provisions of the NDPS Act and more particularly, Section 37 of the NDPS Act and the restrictions placed on the concerned Courts for grant of bail. On the sole ground of non consideration of provision of Section 37 of the NDPS Act, the detention order is vitiated and is liable to be set aside. In **SAYED ABUL ALA v. UNION OF INDIA**¹ the Supreme Court held as under:

"19. An application for bail is required to be filed and considered by the appropriate Court in terms of Section 439 of the Code of Criminal Procedure but in cases involving the provisions of the NDPS Act, the detaining authority was required to take into consideration the restrictions imposed on the power of the court to grant bail having regard to the provisions of Section 37 thereof.

20. Section 37 reads as under: "*37. Offences to be cognizable and non-bailable.-* (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974) -

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for [offences under Section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless --

¹ (2007) 15 SCC 208.

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

The statute, thus, puts limitation on the jurisdiction of the court in the matter of grant of bail. They cannot be ignored by any Court of Law. Several decisions of this Court and of High Court operate in the field.

21. Proper application of mind on the part of the detaining authority must, therefore, be borne out from the order of detention. In cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be some material on record to justify that he may be released on bail having regard to the restriction imposed on the power of the Court as it may not arrive at the conclusion that there existed reasonable grounds for believing that he was not guilty of such offence and that the detenu could not indulge in similar activity, if set at liberty.

22. The detaining authority furthermore is required to borne in mind that there exists a distinction between the "likelihood of his moving an application for bail" and "likelihood to be released on bail". While arriving at his subjective satisfaction that there is likelihood of the detenu being released on bail, recording of the satisfaction on the part of the detaining authority that merely because an application for grant of bail had been filed, would not be enough. It would also not be sufficient compliance of the legal obligation that the detaining authority had informed himself that the detenu has retracted from his earlier confession."

10. In the instant case, all the bail petitions filed by the detenu were dismissed and no bail petition is pending. Hence, it cannot be said that there is imminent possibility of the detenu coming out from jail and indulge in similar activities. In **REKHA Vs. TAMIL NADU**², the Hon'ble Apex Court made the following observations:

² (2011) 5 SCC 244

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

11. Even assuming that the detenu is released on bail, nothing prevents the State from filing an application before the concerned Court for cancellation of bail in case it is found that the bail was granted to the detenu without adherence to provisions of Section 37 of the NDPS Act. An order of detention has to be resorted as an extreme and last step only when attempts made by the authorities to deal with and prosecute the detenu under ordinary law do not yield results. The preventive detention laws cannot be invoked as an easy way method bypassing the ordinary law and if detention order is passed, it is very much necessary for the detaining authority to apply its mind and arrive at a conclusion that ordinary law is not capable of acting deterrent against the detenu and thus, detention order needs to be passed.

12. Mere apprehension of the detaining authority that there is likelihood of the detenu, if enlarged on bail, acting prejudicially to the interest of public order cannot form basis for passing the detention order. The right of a citizen to seek bail cannot be nullified by exercising power of detention under the Act. In **SHASHI AGARWAL v. STATE OF UP**³ it was held as under:

"Every citizen in this country has the right to have recourse to law. He has the right to move the court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the court for bail by clamping an order of detention. The possibility of the court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order."

13. Thus for non-consideration of the provision under Section 37 of the NDPS Act and the necessity to invoke preventive detention law in contrast to the ordinary law (NDPS Act), this Court holds that the impugned order of detention dated 20.03.2020, passed by the third respondent, and the consequential order i.e., G.O.Rt.No.898 dated 16.05.2020, issued by the first respondent State, are unsustainable and are liable to be set aside.

In the result, the Writ Petition is allowed. The impugned detention order dated 20.03.2020 passed by the respondent No.3, and the consequential confirmation order vide G.O.Rt. No.898, dated 16.05.2020 passed by the respondent No.1 are, hereby, set aside. The respondents are directed to set the *detenu*, namely Dharavath Vamshi Naik, S/o.Lingaiah, at liberty forthwith, in case he is no longer

³ (1998) 1 SCC 436

detained in the criminal cases which have been registered so far against him.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

**SD/-I.NAGALAKSHMI
ASSISTANT REGISTRAR**

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SECTION OFFICER

To,

1. The Principal Secretary, Home Department, (POLL), State of Telangana Secretariat building, At Hyderabad.
2. The Director General of Police, At Hyderabad
3. The Commissioner of Police, At Cherlapally.
4. The Superintendent, Central Prison, Cherlapally, Medchal - Malkajgiri District.
5. One CC to Sri. Arun Kumar Mudi, Advocate (OPUC)
6. Two CCs to GP for Home, High Court for the State of Telangana at Hyderabad (OUT)
7. Two CD Copies.

CHR 

HIGH COURT

DATED:27/08/2020



ORDER

W.P.No.8085 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

15/9/2020 (9)