

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

TUESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY

PRESENT

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B.VIJAYSEN REDDY**

WRIT PETITION NO: 10231 OF 2020

Between:

Sama Thirupataiah, s/o Sama Chennaiah, Age 50years, Occ Agriculture, r/o D.No 5-30, Peddur village, Telkapally Mandal, Mahabubnagar District. (presently Nagarkurnool District

...PETITIONER

AND

1. The State of Telangana, rep.by Its Principal Secretary, General Administration Law Order Department, Telangana Secretariat, Hyderabad
2. The District Collector cum District Magistrate, Wanaparthy District, Wanaparthy.
3. The Superintendent, District Jail, Mahabubnagar.

...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 a Writ, Order or Direction more particularly one in the nature of WRIT OF HABEAS CORPUS directing the Respondents herein to produce the detainee Sama Sharath Kumar s/o Sama Thirupathaiah, Age. 27years, Occ Private School Teacher, r/o Peddur village, Telkapally Mandal, Nagarkurnool District, before this Honble Court and to declare the detention order in proceedings No. No. Rc.No. C1/314/2020, Dated 8-6-2020 passed by District Collector-cum-Magistrate, Wanaparthy District i.e. 2nd respondent Under Sub-Section (2) of Section-3 of The of 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 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 (Act No.1 of 1986) as being illegal, arbitrary, violation of principles of natural justice and contrary to the specific provisions contained under the Act 1 of 1986 and has the effect of violation of fundamental rights guaranteed to him u/a 14 and 21 of the Constitution of India and consequently quash the same and forthwith release the detainee,

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 prayed that this Hon'ble Court may be pleased, pending disposal of the writ petition, issue

interim directions to the Respondent Authorities to forthwith release the detainee Sama Sharath Kumar s/o Sama Thirupathalah, Age: 27years, Occ: Private School Teacher, r/o Peddur village, Telkapally Mandal, Nagarkurnool District, i.e., son of the petitioner pending disposal of the writ petition

Counsel for the Petitioner: SRI K. VENKATESH GUPTA

**Counsel for 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 dated 08.06.2020 passed against Sama Sharath Kumar, S/o. Thirupataiah, by the 2nd respondent, Collector and District Magistrate, Wanaparthy District, 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 (Act No.1 of 1986) (for short 'the Act') is challenged in this Writ of Habeas Corpus as being illegal and arbitrary.

2. Heard Mr. K. Venkatesh Gupta, 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 detenu is falsely implicated in two ground cases, which were registered on the same date on the basis of the incidents alleged to have occurred on the same day. The detention order was arbitrarily passed. Since the investigation agency did not file charge sheet within 90 days, the detenu was released on default bail under Section 167(2) Cr.P.C. on some conditions. The detention order suffers from non-application of mind. There is no material to show that the detaining authority passed the order on subjective satisfaction and that the detenu would be involved in similar offences in future. When normal law is capable of taking care of alleged illegal acts of the detenu there was no

necessity to pass the detention order. The detenu is not a habitual offender and mere implication in two cases is not a ground to pass the impugned detention order.

4. *Per contra*, the learned Government Pleader for Home submitted that the detenu indulged in the acts of committing sexual assault on innocent school going minor girls creating large scale fear, panic and a feeling of insecurity among the minor girls studying in schools, their family members etc. The detaining authority recorded a finding that recourse to normal law may not be an effective deterrent in preventing the detenu from indulging in similar activities in future prejudicial to the maintenance of public order. In Cr.No.32 of 2020 registered for the offence under Sections 376 AB, 376 (2)(n)(f), 354, 506 and 509 IPC and Section 5(1)(m)(p) read with Sections 6, 11(1) and 12 of the Protection of Children from Sexual Offenders Act, 2012 (for short 'POCSO Act') of Gopalpet Police Station, the complaint against the detenu was that he called the victim-minor girl, aged 10 years, into his house under the guise of giving private tuition, took her into a room, removed her clothes and committed rape on her and indulged in such acts three times earlier to that date. The victim girl was threatened with dire consequences. In Cr.No.33 of 2020 the detenu committed sexual assault on a minor girl aged 9 years.

5. The detaining authority was satisfied with the material placed before it that the detenu has indulged in acts of Sexual offence by committing heinous crime of "AGGRAVATED PENETRATIVE SEXUAL ASSAULT ON MINOR GIRLS AGED 10 and 9 YEARS". This inhuman act committed by the accused in an organized way and in a planned manner on minor girls has created fear, panic and feeling of insecurity among the innocent girls, school going children, their parents, relatives, locality people and general public thereby adversely affecting

the public order leaving large section of people under the grip of fear and trauma and thus disturbing peace and tranquility in the society which is prejudicial to the maintenance of Public Order. It is also urged that a Constitution Bench of the Supreme Court in **HARADHAN SAHA v. STATE OF WEST BENGAL** (AIR 1974 SC 2154) dealt with the concept of preventive detention. It was observed that preventive detention is not to punish the detenu not for something he has done but to prevent him from doing it. The detaining authority was satisfied that the acts of the detenu were grave in nature indulging in aggravated sexual penetration with two minor girls. The statements of the victim girls were recorded under Section 164 Cr.P.C. The respective mothers of the victim girls have also given statements before the police. Thus, the detaining authority has recorded subjective satisfaction that the acts of the detenu are prejudicial to the maintenance of public order. The detenu moved bail petitions and the same were dismissed. However, there is likelihood of granting statutory bail to the detenu.

6. In the impugned detention order, the detaining authority has referred two criminal cases, as grounds for passing the detention order i.e. Cr.Nos.32 and 33 of 2020 registered under Sections 376 (2)(n)(f), 354, 506 and 509 IPC and Section 5(1)(m)(p) read with Sections 6, 11(1) and 12 of POCSO Act. As found from the impugned detention order, the detenu moved bail petitions one after another and all the bail petitions were dismissed and the detenu continues to be in judicial custody.

7. **SUBJECTIVE SATISFACTION:-** The subjective satisfaction of the detaining authority was on the basis of sexual exploitation and rape of minor girls by the detenu. The satisfaction of the detaining authority was recorded stating that due to inhuman and shameful

incident on the victim girls, family members, public, inhabitants of the locality especially parents of the teenage girls are in shock and fear. The incident has caused loss of faith among general public in humanity and caused hatred towards human beings like detenu and the locality people are in fear to send their girl children out of the residences fearing similar offences on their children. The locality people are not only frightened but also feel insecure to stay in the locality where the detenu is staying because of the incident of aggravated sexual assault on a innocent minor girl by taking advantage of the situation and sexually assaulting the girl in a deceptive manner. Thus a large section of people, especially minor and teenage girls and their parents are under fear and shock and thereby adversely affecting the public order.

8. There cannot be any doubt that the activities of the detenu will have an adverse bearing on the mind of the minor girls and their parents and residents of that locality. Abnormal and inhuman conduct of the detenu would definitely create fear and apprehension in the minds of the residents of the particular locality, especially, people who have minor daughters. The subjective satisfaction of the detaining authority has to be tested on limited grounds with reference to availability of sufficient material, cogent reasons, necessity for passing the detention order, element of public order etc. This Court in exercise of power of judicial review cannot act as an Appellate Authority. If the subjective satisfaction is based on relevant and cogent material, this Court cannot interfere with the detention order.

9. The Hon'ble Supreme Court while dealing exhaustively on the concept of subjective satisfaction in **KHUDIRAM DAS Vs. THE STATE OF WEST BENGAL AND OTHERS**¹ observed at para 8 as under:

"8. Now it is clear on a plain reading of the language of

¹ (1975) 2 SCC 81

sub-sections (1) and (2) of section 3 that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner; as set out in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of section 3 are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J., pointed out in *State of Madras v. V. G. Row* [A.I.R. 1952 S.C. 597] that preventive detention is "largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *Rex v. Halliday*, [[1917] A.C. 260] namely, that "the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be, likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of section 3, and it so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left

by the legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would, be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. This would clearly show that the power of detention is not a quasi-judicial power. It was, however, sought to be contended on behalf of the petitioner, relying on the observation of this Court in *Bhut Nath Mata v. The State of West Bengal* that the exercise of the power of detention "implies a quasi-judicial approach", that the power must be regarded as a quasi-judicial power. But we do not think it would be right to read this observation in the manner contended on behalf of the petitioner. This observation was not meant to convey that the power of detention is a quasi-judicial power. The only thing which it intended to emphasise was that the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention."

10. A crime is considered to be a wrong against a society. It is not the individual victim or family of the victim, who is/are only affected by the criminal act but public at large in a way are affected. It is for such reason the State takes up the responsibility to prosecute an offender. Even if the victim does not lodge a complaint, the person, who is actually not affected can be an informant and upon such information of commission of cognizable offence an FIR can be registered and prosecution can be launched by the State, the underlying purpose being to protect law and order, which is the

primary responsibility of the State. Even in grave offences like murder (Section 302 IPC), attempt to murder (Section 307 IPC), criminal acts are committed against specific individuals and in many cases it is the individuals, who are actually the affected parties. However, offences relating to POCSO stand on a different footing. The act of sexual offences against children/minors shakes the conscience of the society and creates sense of fear and insecurity. In spite of IPC dealing with sexual offences under Chapter XVI which also include offences committed against minor children, a need was felt to enact POCSO Act, 2012, which deals with various forms of aggravated penetrative sexual assault as enumerated under Section 5 therein. Section 6 of the said Act deals with punishment for aggravated sexual assault and prescribes rigorous imprisonment which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for remainder of natural life of that person and shall also liable for fine or death. It can be presumed from greater degree of punishment provided under the POCSO Act, that the menace of sexual offences against children has reached enormous proportions and same needs to be tackled with an iron hand, so as to be deterrent on the offenders.

11. Giving protection and safeguarding a child, more particularly a girl child, is not the sole responsibility of the parents, relatives or guardians as the case may be, but it is the social responsibility of every citizen. Today's children are the future of our country. If a child is subjected to a sexual offence at a tender age of three years, the amount of trauma that the child undergoes cannot be described in normal words. Further, the impact of such incident on the parents and family members will be enormous. The child will have to suffer such

mental stress for the rest of her life. The sufferance of the victim child may possibly affect her prospects in life.

12. It will be useful to quote from the research papers/articles published by the child psychologists and experts about the impact of trauma on account of sexual abuse.

"The trauma that results from sexual abuse is a syndrome that affects not just the victim and their family, but all of society. Because sexual abuse, molestation, and rape are such shame-filled events, our culture tends to suppress information about them."
(Trauma: Childhood Sexual Abuse by Susanne Babbel MFT, PhD., Somatic Psychology). Posted on psychologytoday.com on 13th March, 2013 and updated in the website in the year 2020.

Consequences:

"Sexual assault in childhood or adulthood impacts not only the victim, but also the victim's family and friends as well as society as a whole. In this regard, sexual assault is a public health problem that concerns everyone. Sexual assault has numerous potential consequences that can last a lifetime and span generations, which serious adverse effects on health, education, employment, crime, and the economic wellbeing of individuals, families, communities and societies."

(Understanding sexual assault by INSPQ, Institute National de Santé Publique du Québec (French: National Public Health Institute of Quebec; Canada) ... Available in the website-mobile.inspq.ac.ca of INSPQ in 2020.

13. In view of the foregoing reasons, this Court does not find any valid grounds to interfere with the subjective satisfaction arrived at by the detaining authority. There are no merits in the writ petition and the same is liable to be dismissed and accordingly, dismissed. However, it is made clear that the observations made in this order shall not be construed as an expression of opinion on the merits of the

case in Cr.Nos.32 and 33 of 2020 and this order shall not have any bearing on the trial and disposal of the said cases.

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

//TRUE COPY//

SD/- B. SATYAVATHI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. One CC to Sri K Venkatesh Gupta Advocate [OPUC]
2. Two CCs to GP for Home, High Court for the State of Telangana (OUT)
3. Two CD Copies

MBC



HIGH COURT

DATED: 13/10/2020



ORDER

WP.No.10231 of 2020

DISMISSING THE WRIT PETITION

WITHOUT COSTS

5
M. J. A.
05/11/2020