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

TUESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

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

WRIT PETITION NO: 15832 OF 2020

Between:

Varthyavath Sevya, S/o. Shakru, Aged 27 years, Occ. Agriculture, R/o. H.No.3-7, Bairkhanpally Thanda, Keshampet Mandal, Ranga Reddy District.

...PETITIONER

AND

1. State of Telangana, Rep. by its Principal Secretary, Department of Home, Secretariat Buildings, Saifabad, Hyderabad
2. The Commissioner of Police, Rachakonda Commissionerate, Neredmet, Hyderabad.
3. The Station House Officer, Abdullapurmet Police Station, Cyberabad, Ranga Reddy District.
4. The Station House Officer, Vanasthalipuram Police Station, Cyberabad, Ranga Reddy District.

...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 or order or direction more particularly one in the nature of Writ of Habeas Corpus directing the respondents to produce the detenue i.e. Varthyavath Bhaskar @ Bhaskar S/o. Shakru, Aged 22 years, Occ. Business, R/o. Plot No.26, Gajji Swamy Colony, Hayathnagar Mandal, Ranga Reddy District, N/o H.No.3-7, Bairkhanpally Thanda and GP, Tettekunta Thanda, Keshampet Mandal, Ranga Reddy District, before this Hon'ble Court and set him at liberty by setting aside the impugned Detention Order No.28/PD Cell/CCRB/RCKD/2020, dated 10-07-2020 passed by the 2nd respondent, being illegal, arbitrary and violative of Articles 21 of the Constitution of India apart from being violative of principles of natural Justice.

Counsel for the Petitioner: SRI PAPAIAH PEDDAKULA

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 of Varthyavath Bhaskar @ Bhaskar, S/o. Shakru, dated 10.07.2020, passed by the Commissioner of Police, Rachakonda Commissionerate 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'), is challenged in this writ of Habeas Corpus as being illegal, arbitrary, unconstitutional.

2. Heard Mr. Papaiah Peddakula, the learned counsel for the petitioner and Mr. T. Srikanth Reddy, the learned Government Pleader for Home for the respondents.

3. The learned counsel for the petitioner submits that the detention order is passed in a mechanical manner without application of mind on vague, irrelevant, extraneous and non-existent grounds. The detaining authority was aware that the detenu was already in jail and the bail petitions were dismissed. There is no material to show that the detenu had previous crime history and subjective satisfaction of the authority on the premise of previous history is without application of mind. There is no FSL report filed in Cr.No.227 of 2020 of P.S. Vanasthalipuram and satisfaction of the detaining authority without such material is baseless.

4. Per contra, the learned Government Pleader for Home submitted that detenu answers the description of 'Drug Offender' as he indulged in Narcotic Drugs (Ganja) peddling, along with his associates, in an organized manner and thereby acting prejudicial to the maintenance of public order. The activities of the detenu would endanger the lives of the 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 detaining authority arrived at the subjective satisfaction that the launching of prosecution against the detenu would not have desired effect in preventing the detenu from acting in any manner prejudicial to the maintenance of public order and public health. Thus, the detention order is passed in the interest and safety of community at large.

5. In the impugned detention order, two criminal cases are referred to as the grounds for passing the detention order viz. Cr.No.227 of 2020 registered under Section 20(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') of Vanasthalipuram Police Station and Cr.No.73 of 2020 under Section 20(ii)(b) of the NDPS Act of Abdullapurmet Police Station.

6. In the first crime, the Inspector of Police, Vanasthalipuram PS, registered the said crime on 03.03.2020 on receiving credible information about illegal possession and transportation of Ganja, which is a narcotic substance. The Inspector of Police informed the Tahsildar, Hayatnagar Mandal to depute two officials to act as mediators. Accordingly, the Tahsildar, Hayatnagar Mandal, directed two VROs to act as mediators, who accompanied the police and proceeded towards Sulabh Complex, Panama godowns, Vanasthalipuram and apprehended one person, identified by the informant, waiting with a gunny bag.

The police searched the gunny bag and found 10 packets wrapped with plastic cover containing Cannabis emanating distinct odour known as Ganja. On being questioned, the person disclosed his identity as Kethavath Prakash and confessed that he along with his associates viz. Ramavath Pandu and Varthyavath Bhaskar (detenu) were transporting Ganja to Maharashtra in order to sell it to one Karan Parkale for make of easy buck. By complying with the procedure under Section 50 of the NDPS Act, the detenu was given notice to search him before any Magistrate or Gazetted Officer and thereafter, a requisition was sent to the Detective Inspector of Police, Hayatnagar PS. On his arrival to the spot, the packets were opened and loose dry leafy substance i.e. ganja was found in all 10 packets totaling 100 KGs. The police also seized one cell phone used for communication purpose in the commission of offence and Rs.40,000/- cash in net under the cover of panchanama. The samples seized were sent to FSL for chemical analysis and report. The case is under investigation for collecting further evidence.

7. In the second crime, the Police, Abdullapurmet, on receiving credible information about illegal transportation of Ganja on NH-65, conducted vehicle search, after securing mediators and found on Mahindra XUV 500 vehicle moving under suspicious circumstances. When the vehicle was stopped and searched, the police found two gunny bags, each gunny bag containing 10 big Ganja packets and on questioning the inmates of the vehicle about the material found, they replied that two gunny bags containing 20 Ganja packets each packet weighing 10 KGs, were purchased at Visakhapatnam and transporting them illegally to Maharashtra to sell at a higher price. After serving notice under Section 50 of the NDPS Act, in the presence of panchas, the police opened the gunny bags and found 10 packets in each bag and each packet containing 10 KGs Ganja, totaling to 200

KGs. The police recorded the confession and seized the Ganja. They confessed that on 27.02.2020, they purchased 100 KGs of Ganja and kept the same in the house of Kethavath Prakash for later disposal. On 02.03.2020, the trio proceeded to Visakhapatnam and purchased 200 KGs of Ganja and on 03.03.2020, they dropped the detenu to bring 100 KGs ganja, which was kept in his house.

8. As seen from the record, the detenu moved four bail applications in Cr.No.227of 2020, police filed counter and the concerned dismissed all the four bail applications. The detenu moved three bail applications in Cr.No.73 of 2020 and the concerned Court dismissed all the bail applications. Further, the detenu moved bail applications before the High Court in both the crimes and the same are pending.

9. There cannot be any doubt that the offences involving the NDPS Act affect public at large. The mental and physical health of people, more particularly, youngsters, students etc. will be at stake, if the activities relating to drug-trafficking are not controlled with iron hand. The consumption of narcotic and psychotropic substances affects the nervous system and causes immense damage to the health of the people who are addicted to such substances. The detenu was found to be in possession of commercial quantity of Ganja. A large quantity of Ganja seized is, obviously, meant for distribution and sale to gullible people, more particularly, youngsters. In 2020, the detenu was involved in two cases in quick succession relating to offences under the NDPS Act. Thus, the detenu is a habitual offender and involved in organized crimes. The activities of the detenu have the possibility of causing adverse impact on the health, thereby, endangering the public safety, which would thereby affect public order.

10. It is not the gravity of the offence but it is the quality of such offence, which would determine whether it will have an impact on the public order. The reach of the prejudicial activities on the public would decide whether activities would merely relate to maintenance of law and order or public order. Here, in the instant case, the activities of the detenu would have impact on the general public, their safety and, physical and mental health. Thus, there is an element of public order involved as defined under Section 2(f) of the Act since according the detaining authority the detenu falls within the description of "Drug-offender". The Hon'ble Supreme Court in **HARPREET KAUR (MRS) HARVINDER SINGH BEDI Vs. STATE OF MAHARASHTRA AND ANOTHER**[1] held as under:

> 18. From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the each of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of `law and order' or has acted in a manner likely to cause disturbance to `public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of `public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to "public order" or belong to the category of being prejudicial only to `law and order'. An order of detention under the Act would be valid if the activities of a detenu affect `public order' but would not be so where the same affect only the maintenance of `law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention.
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> 26. The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981 was enacted to provide for preventive detention of slumlords, bootleggers and drug-offenders for preventing their dangerous activities prejudicial to the maintenance of `public order'.

[1] (1992) 2 SCC 177

27. Section 2(a) defines the meaning of the expression "acting in any manner prejudicial to the maintenance of public order" and reads as follows:

"2(a) 'acting in any manner prejudicial to the maintenance of public order' means__

(i) in the case of a slumlord, when he is engaged, or is making preparations for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iii) in the case of drug-offender, when he is engaged or is making preparations for engaging, in any of his activities as drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;

Explanation: For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm of a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health;"

28. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse affect on `public order'. It provides that if any of the activities of a person referred to in clause [(i)-(iii)] of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or a wide- spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether `public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act."

11. The subjective satisfaction arrived at by the detaining authority cannot be said to be without any legal basis. The detaining authority having considered two crimes committed by the detenu in quick

succession reached the conclusion that the activities of the detenu would affect public at large and maintenance of public order. The detaining authority was also of the opinion that the bail applications moved by the detenu were dismissed and the detenu may move bail application and there is possibility of being granted bail in regular course since some more time would be required for filing charge sheet. Such subjective satisfaction cannot be said to be without any application of mind. It is settled law that this Court does not sit as an appellate Court to review the subjective satisfaction of the detaining authority unless it is made out that the subjective satisfaction is not based on cogent material, proper application of mind, violation of Constitutional rights etc.

12. The Hon'ble Supreme Court while dealing exhaustively on the concept of subjective satisfaction in **KHUDIRAM DAS v. THE STATE OF WEST BENGAL AND OTHERS**[2] observed at para 8 as under:

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

[2] (1975) 2 SCC 81

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(1) 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,(2) 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 if 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 (1) A.I.R. 1952 S.C. 597. (2)[1917] A.C. 260 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 (1) that the exercise ofthe power of detention "implies a quasi-judicial approach", that the power mustbe 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."

13. Further the detaining authority was aware that the detenu was in custody and formed an opinion that activities of the detenu are prejudicial to the maintenance of public order and in order to prevent the detenu from indulging in such activities, the detention order is necessitated. In **UNION OF INDIA Vs. PAUL MANICKAM AND ANOTHER**[3] held as under:

> 14. So far as this question relating to procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in Jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. ordinarily, it is not needed when detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied on cogent materials that there is likelihood

[3] (2003 8 SCC 342

> of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging such prejudicial activities the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See N. Meera Rani v. Govt. of Tamil Nadu: ; Dharmendra Suganchand v. Union of India:). The point was gone into detail in Kamarunnissa v. Union of India . The principles ware set out as follows. Even in the case of a person in custody, a detention order can be validly passed (1) If the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him; (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities, and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show awareness of custody and/or possibility of release on bail.

14. There is no force in the contention of the learned counsel of the petitioner in submitting that the detention order was passed without application of mind since the detaining authority referred to past history of the detenu which does not exist. The entire order has to be read to understand the mind of the detaining authority and not a stray word or sentence, out of context. The authority only referred to two crimes which formed the basis and there is no reference to past crime for passing the detention order, so therefore, there would not be question of detaining referring to past crime history. Further submission of the learned counsel for the detenu that the FSL report in Cr.No.227 of 2020 of P.S. Vanasthalipuram, is pending, is of no significance for the reason the subjective was arrived at by the detaining authority on account of involvement of the detenu in two NDPS offences (Ganja) treating the detenu as drug offender as defined under Section 2(f) of the Act.

15. As pointed above, the activities of the detenu are prejudicial to the maintenance of public order and so also the subjective satisfaction was arrived at based on relevant material. Since the detenu was involved in two crimes under the NDPS Act involving possession and transportation etc., of commercial quantity of Ganja, this Court finds there are no merits in the writ petition and the same is liable to be dismissed.

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

SD/-K.VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri. Papaiah Peddakula, Advocate [OPUC]
2. Two CCs to GP for Home, High Court for the State of Telangana. [OUT]
3. Two C.D. Copies

Prk

HIGH COURT

DATED:22/12/2020



ORDER

WP.No.15832 of 2020

Dismissing the WP.
without costs.

(S) VLV
7/1/21