

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

AND

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION NO.20517 OF 2023

ORDER:- *(Per Hon'ble Sri Justice Tarlada Rajasekhar Rao)*

The present writ petition for *Habeas Corpus* is filed under Article 226 of the Constitution of India seeking a direction to the 4th respondent to produce the detenu by name Shaik Siraj, son of late Gayaz Basha, before this Court and to set him at liberty forthwith by declaring the detention order dated 29.05.2023 passed by the 2nd respondent, as illegal and unconstitutional.

2. On the recommendation of the sponsoring authority i.e., 3rd respondent-Superintendent of Police, the 2nd respondent-District Collector-cum-District Magistrate vide proceedings dated 29.05.2023 by exercising powers conferred under Section 3(1) and (2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for short "the Act"), has passed the detention order detaining the detenu on the ground that the detenu was indulged in selling Ganja. Despite the following seven cases were registered

against him under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”), there is no reasonable prognosis of future behavior, hence, it is necessitated to pass the detention order. The details of the said crimes registered against him are as follows:

1. *Santhapeta PS :Cr.No.155/2014, U/s 8(c) r/w 20 (b)(i) of NDPS Act.1985.*
2. *Kaluvoy PS :Cr.No.15/2016, U/s 8(c) r/w 20 (b)(i) of NDPS Act.1985.*
3. *Nellore-I SEB PS :Cr.No.78/2018, U/s 8(c) r/w 20 (b)(ii)(B) of NDPS Act.1985.*
4. *Nellore-I SEB PS :Cr.No.91/2018, U/s 8(c) r/w 20 (b)(ii)(B) of NDPS Act.1985.*
5. *Nellore-I SEB PS :Cr.No.180/2021, U/s 8(c) r/w 20 (b)(ii)(A) of NDPS Act.1985.*
6. *Nellore-I SEB PS :Cr.No.74/2022, U/s 8(c) r/w 20 (b)(ii)(B) of NDPS Act.1985.*
7. *Nellore-I SEB PS :Cr.No.75/2022, U/s 8(c) r/w 20 (b)(ii)(B) of NDPS Act.1985.*

3. Aggrieved by the said detention order and the consequential approval and confirmation orders dated 06.06.2023 and 03.08.2023, the present writ petition came to be filed on the grounds that the sponsoring authority has not placed the bails granted to the detenu before the detaining authority. If the same are placed before the detaining authority, the detaining authority dissuaded from passing the detention order. It is also stated that in two crimes, the detenu was acquitted and those material was also not placed before the

detaining authority. Therefore, prayed to set aside the detention order and as well as the consequential approval and confirmation orders.

4. Per contra, learned counsel for the respondents has filed counter and denied the contentions raised in the writ petition and stated that the detenu is repeatedly indulging in committing the offence of purchase, possession, sale and transportation of Ganja in contravention of Section 8(c) r/w 20 (b) (ii)(A)/(B) of NDPS Act. The detenu is not the licence holder or any permit to deal in any kind of works under the provisions of the NDPS Act and the acts committed consequently covers the definition under Section 2 (f) of the Act and therefore prayed to dismiss the writ petition.

5. In the case on hand, the detenu was granted bail in all the cases which are referred in the detention order as well as in grounds of detention orders, the same was not considered by the detaining authority while passing the detention order.

6. In ***Union of India & ors v. Manoharlal***

***Narang*¹** and in ***P.U.Abdul Rahiman v. Union of India*²**, the Apex Court held that non-consideration of the bail order would amount to non-application of mind as non-consideration of relevant and important material is fatal to the detention order. If the detaining authority had considered the order, it may have persuaded him to desist from passing the order of detention. Bail application and the bail order are vital material for consideration. If they have not been considered, the satisfaction of the detaining authority would itself be impaired and, if they had been considered, they would be documents relied upon by the detaining authority though not specifically mentioned in the annexure to the order of detention, and those ought to have formed part of the documents supplied to the detainee with the grounds of detention. Without them, the grounds themselves cannot be said to have been complete. It is needless to say that a detaining authority will pass an order of detention only on the basis of the material placed

¹ (1986) 2 SCC 241 = AIR 1987 SC 1472

² 1991 Supp (2) SCC 274

before him and will not allow his mind to be influenced by what is not set out by the detaining authority in an affidavit sent along with the materials against the bootlegger or goonda for being considered by the detaining authority.

7. The distinction has been noticed by this Court in ***Powanammal v. State of T.N. and Anr.***³, at paragraph No.9, it was observed as follows:

"However, apex court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention."

8. In ***Shalini Soni v. Union of India***⁴, ***Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commr. of Police***⁵, and in ***Jagan Nath Biswas v. State of W.B.***⁶, the Supreme Court quashed the detention order holding that the incidents themselves look rather serious but also stale, having regard to the long gap between the occurrences and the order of detention. One should have expected some proximity in time to

³ (1991) 2 SCC 413

⁴ (1980) 4 SCC 544 = AIR 1981 SC 431

⁵ (1995) 3 SCC 237

⁶ (1975) 4 SCC 115

provide a rational nexus between the incidents relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction.

9. In ***Mohd. Sahabuddin v. Distt. Magistrate, 24 Parganas***⁷, the Supreme Court quashed the order of preventive detention on the sole ground that the order of preventive detention was passed nearly seven months after the criminal incident. Subjective satisfaction has no proximate rational nexus with prejudicial act.

10. In another recent judgment in ***Mallada K Sri Ram v. State of Telangana***⁸, while referring to its earlier decisions in ***Banka Sneha Sheela's case ((2021) 9 SCC 415)***: held as follows:

In *Mallada K. Sri Ram* referred supra: The Apex Court was pleased to quash detention order as it is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention under S 3(2) of the Act. Nor it is open to the detaining authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been

⁷ (1975) 4 SCC 114

⁸ 2022 SCC Online SC 424

mentioned as a ground of detention that said detention order was passed nearly 7 months after the 1st FIR and 5 months after the 2nd FIR, and was therefore based on stale material and demonstrated as non-application of mind.

11. In the case on hand, detenu was detained as he was indulged in seven cases. On perusal of the detention order, it appears that the first incident has taken place in the year 2014 and the last incident has taken place on 09.09.2022 and the detention order was passed on 29.05.2023. So, there is a gap of more than eight months from the date of last incident to the date of passing of the said detention order.

12. As rightly contended by the learned counsel for the petitioner that the detaining authority has not considered the bail orders and the acquittal of the criminal cases of the detenu. So, it is not open to the detaining authority to pick up an old and stale incident and hold it as the basis of an order of detention under Section 3(2) of the Act. In this case, the apprehension of a disturbance to public order owing to a crime that was reported prior to the detention order has no basis in fact. Hence, the above judgments are squarely applicable to the facts of this case. The detention order dated 29.05.2023 and

the consequential approval and confirmation orders dated 06.06.2023 and 03.08.2023, are liable to be quashed.

13. A Court cannot go into correctness or otherwise of the facts stated or allegations leveled in the grounds in support of detention. A Court of Law is the last appropriate forum to investigate into circumstances of suspicion on which such anticipatory action must be largely based. That, however, does not mean that the subjective satisfaction of detaining authority is wholly immune from judicial reviewability. By judicial decisions, Courts have carved out areas, though limited, within which the validity of subjective satisfaction can be tested judicially. The Court must apply its mind to ascertain whether the detaining authority has scrupulously followed the procedures and any infraction or procedural lapses would ultimately result in violation of the fundamental right guaranteed under Article 21 of the Constitution of India and it will lead to setting aside the said order.

14. For the above discussion, it is clear that the order of detention passed does not satisfy the ingredients of Section 3 read with Section 2(f) of the Act and the same is arbitrary and illegal and liable to be set aside. The subjective satisfaction arrived at by

the detaining authority is contrary to the settled principles of law, as indicated above. Hence the detention order dated 29.05.2023 and the consequential approval and confirmation orders dated 06.06.2023 and 03.08.2023 are liable to be set aside.

15. Resultantly, the Writ Petition is allowed setting aside the impugned order of preventive detention, dated 29.05.2023 that was passed against the detenu by name Shaik Siraj and also the consequential approval and confirmation orders dated 06.06.2023 and 03.08.2023 that were passed confirming the said order. The detenu by name Shaik Siraj shall be forthwith released and set at liberty, if not required in any other case. There shall be no order as to costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TARLADA RAJASEKHAR RAO

Date: 10.10.2023

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