
(2017) 01 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1746 of 2017

A. Gurusingh Raio

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 — Section 3(2)
Information Technology Act, 2000 — Section 66(c), Section 66(d)

Citation : (2017) 1 ALTcrI 451 : (2017) 1 AndhLDCriminal 830 : (2017) CrILJ 2566 : (2017) 1 HLT(CrI) 272

Hon'ble Judges : Suresh Kumar Kait and U.Durga Prasad Rao, JJ.

Bench : Division Bench

Advocate : Mr. G. Digamber, Counsel, for the Petitioner; Advocate General (TG), for the Respondents

Final Decision : Disposed Off

Judgement

Suresh Kumar Kait, J.—Vide present Writ Petition, the petitioner seeks a direction thereby to set aside the order of detention in SB (I) No.299/PD/SI/2016, dated 5.6.2016 passed by the second respondent and set his son-in-law by name Tarun Gupta @ Amrit Sabharwal, S/o Late Uma Shankar Guptha at liberty forthwith.

2. The case of the petitioner is that his son-in-law, by name Tarun Gupta @ Amrit Sabharwal (hereafter referred to as "the detenu") was arrested by the Delhi police on 1.4.2016 in connection with FIR No. 317 of 2016 registered on the file of Station House Officer, Police Station, Saket, New Delhi, for the offence punishable under Section 420 IPC and was remanded to judicial custody. In pursuance of the orders (P.T. Warrant) of the learned Additional Chief Metropolitan Magistrate-cum-Special Metropolitan Magistrate for trial of cases under Labour and Factories Act, Hyderabad, dated 29.04.2016, the Delhi Police brought the detenu to Hyderabad from Rohini Jail, New Delhi and produced

before the aforesaid Court on 20.05.2016. The said Court remanded the detenu to judicial custody in Crime Nos. 84 of 2016, 86 of 2016 and 99 of 2016 registered on the file of Cyber Crime Police Station, CCS, DD, Hyderabad (Respondents 3 and 4 herein).

3. Learned Counsel appearing on behalf of the petitioner submits that the detenu was ordered to be released on bail by the learned XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad in Crime Nos. 84 of 2016, 86 of 2016 and 99 of 2016 and was also ordered to be released on bail by learned XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad in Crime No. 235 of 2016 registered on the file of SHO, Jubilee Hills Police Station, Hyderabad. Thus in all the four crimes, the detenu was ordered to be released on bail by the respective Courts on 01.06.2016.

4. Learned Counsel appearing on behalf of the petitioner further submits that in spite of the orders passed by the Courts above, the detenu was detained by the second respondent at the instance of Respondents 4 and 5 till detention order dated 05.06.2016 was executed on 10.06.2016. Thus, the third respondent miserably failed to comply with the provisions set out in the penal laws and did not transit the detenu to the Rohini Jail, New Delhi, in spite of production of warrants issued by the Delhi Police to the third respondent for the production of detenu before the Saket Court at New Delhi. On the other hand, the detenu was illegally detained by the second respondent for a period of four days and the provisions of Sub Section 2 of Section 3 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986 (hereinafter referred to as "the Act 1 of 5 1986" for brevity) was imposed upon the detenu on 5.6.2016 and since then, the detenu has been languishing under the preventive detention in spite of the orders of learned XII ACMM and learned XVII ACMM, Nampally, Hyderabad for his release.

5. Learned Counsel appearing on behalf of the petitioner further submits that the detenu had already settled/compromised the matters with the respective complainants and he has filed Criminal Petition No. 10091 of 2016 for quashing of Crime No.86 of 2016 under Section 66 (c) & (d) of I.T. Act, 2008 read with Section 419, 420, 467, 468, 471, 120-B IPC, registered on the file of Station House Officer, Police Station, Cyber Crimes, CCS, DD, Hyderabad which was pending on the file of learned XII ACMM, Nampally, Hyderabad. This Court while disposing of the aforesaid Criminal Petition quashed Crime No. 86 of 2016.

6. Learned Counsel further submits that the detenu had also preferred Criminal Petition No. 11367 of 2016 for quashing of Crime No. 84 of 2016 under Section 66 (C) & (d) of I.T. Act, 2008 read with Section 420 IPC, registered on the file of Station House Officer, Police Station, Cyber Crimes, CCS, DD, Hyderabad, which was pending on the file of learned XII ACMM, Nampally, Hyderabad. The said Criminal Petition was allowed by this Court quashing Crime No. 84 of 2016. In addition, the Crime No. 235 of 2016 registered on the file of SHO, Police Station,

Jubilee Hills, Hyderabad under Section 420 IPC has been compounded before the learned XVII ACMM, Nampally, Hyderabad. The detenu 6 further preferred Criminal Petition under Section 66 (c) & (d) of the I.T. Act, 2008 and Section 420 IPC for quashing of Crime No. 99 of 2016 pending on the file of learned XII ACMM, Nampally, Hyderabad and the same has been allowed by this Court vide order dated 16.09.2016 quashing the proceedings in Crime No. 99 of 2016 and the same is evident from Page No.53 of the material papers annexed to the Writ Petition.

7. Learned Counsel appearing on behalf of the petitioner submits that the detenu has been detained illegally under Section 3(2) of the Act 1 of 1986 as the offences registered against the detenu are private in nature and all are settled with the complainants and as on the date, no crime is pending against him in the State of Telangana. Thus, at no any point of time, the detenu was a threat to the public order and peace in the State of Telangana.

8. Learned Government Pleader appearing on behalf of the respondents submits that the detenu had cheated the public at large especially the software companies and consequently he created panic and fear in the minds of public and thereby the third respondent-Commissioner of Police, Hyderabad by exercising the powers conferred under Section 3(2) of the Act of 1 of 1986 passed the order impugned to detain the detenu in order to promulgate peace and tranquility in the society. He submits that there are five cases registered against the detenu and therefore the impugned detention order passed by the third respondent is justified.

9. Heard the learned Counsel appearing on behalf of the petitioner and learned Government Pleader appearing on behalf of the respondents.

10. The detention order dated 5.6.2016 was passed on the ground that the detenu-Tarun Gupta @ Amrit Sabharwal was a cheater and "goonda" and that he has been indulging in serious offences of cheating by making fraudulent transactions inviting online tenders from various Software companies in favour of M/s SDM Services floated by him, his wife and his associates with the sole intention to cheat the public for making easy money on the pretext of taking up of projects in the Skill Development Corporation, Government of India and thus creating large scale fear and panic among the people adversely affecting the public order. He was involved in as many as five offences in the limits of Hyderabad Police Commissionerate and also in New Delhi. He has been creating fear and panic in general public especially people associated with software companies by committing such offences. He has been acting in a manner prejudicial to maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society.

11. Thus mentioning the antecedents stated herein above, it was recorded in the detention order that there was every likelihood of his indulging in similar prejudicial activities, which were detrimental to public order unless he was

prevented from doing so by an appropriate order of detention. Consequently in exercise of the powers conferred under Section 3(2) of the Act of 1 of 1986, the second respondent-Commissioner of Police, Hyderabad city passed the order impugned on 05.06.2016 and the said order was executed on 10.06.2016 upon the detenu and he was thereby lodged in jail.

12. Before entering into the merits or demerits of the impugned order, let us have a look at the unreported judgment of the Division Bench of this Court in Writ Petition No. 34674 of 2014 in the case of P. Nagaraju v. State Of Telangana, Rep. By Its Chief Secretary, General Administration Department, Secretariat, Hyderabad and Ors, wherein this Court while interpreting the judgments of the Apex Court in Yumman Ongbi Lembi Leima v. State of Manipur {(1975) 3 Scc 198}, T.Devaki v. Government of Tamilnadu & Ors {(1990) 2 Scc 456} and Harpreet Kaur (Mrs.), Harvinder Singh Bedi v. State of Maharashtra {(1992) 2 SCC 177}, observed as under:

"As mentioned above, of the four crimes, the detenu was acquitted in one crime and respondent No.2 has mainly relied upon two crimes. No doubt, the detenu, who is just 21 years of age and stated to be a student, appears to have taken to the habit of committing offences, such as, kidnapping and extortions, and he is involved in commission of four offences over a period of three years from 2012 to 2015. It is, however, significant to note that no 9 rowdy sheet has been opened against the detenu as envisaged under the Andhra Pradesh Police Standing Orders. If the detenu was habitually committing crimes, we do not find any reason for the Police, not to open a rowdy sheet against him to start with to prevent him from committing the offences. If the activities of the detenu were really causing prejudicial to the maintenance of public order, the Police as a first step should have opened a rowdy sheet. Though we do not intend to play down the gravity of the acts committed by the detenu, we are of the opinion that these acts may be termed as disturbing law and order, more than causing breach of public order, a distinction which was well explained by the Supreme Court in a catena of judgments as referred to above. Since the respondents failed to prove that the activities of the detenu are prejudicial to the maintenance of the public order, the impugned detention order, as confirmed by respondent No.1, cannot be sustained.

13. In the case of Cherukuri Mani v. The Chief Secretary, Government of Ap and Ors decided by the Apex Court in Criminal Appeal No. 1133 of 2014 on 08.05.2014, held as under:

"7. When the appellant challenged the detention of her husband before the High Court in a habeas corpus Writ Petition, the High Court dismissed the same with a cryptic order. In our considered view, when habeas corpus writ petition is filed, even though the petitioner has not properly framed the petition and not sought appropriate relief, it is expected from the Court to at least go into the issue and decide on merits. Normally, in such matters where liberty of a person is at stake, the Courts would take a liberal approach in the procedural aspects. But

unfortunately in the instant case, the High Court has dismissed the writ petition at the threshold itself.

16. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the Legislature has specifically provided the mechanism "Advisory Board" to review the detention of a person. Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned Government Order directing detention for the maximum period of twelve months straightaway cannot be sustained in law."

14. Coming to the case on hand, it is not in dispute that four cases were registered against the detenu in the State of Telangana as noted above. The detenu was released on bail in all the cases registered in the State of Telangana on 01.06.2016. It is also not in dispute that pursuant to the PT warrant issued, the detenu was brought from New Delhi by Delhi police and produced before the Court at Hyderabad, where at he was an accused in Crime Nos. 84, 86 and 99 of 2016. Since the detenu was released on bail on 01.06.2016, it was the mandatory duty of the respondents-Police to remand the detenu to Rohini Jail, New Delhi in connection with Crime No. 317 of 2016 which was registered for the offence punishable under Sections 420 read with 34 IPC. However, the respondents chosen to keep the detenu arbitrarily in Chenchalguda jail, Hyderabad.

15. It is also not in dispute that from 01.06.2016 to 05.06.2016 there was no detention order against the detenu; however, for the reasons best known to the respondents, they kept the detenu in prison at Chenchalguda, Hyderabad. The detention order dated 5.6.2016 was executed on 10.06.2016. There is no explanation forthcoming in the counter affidavit filed on behalf of the respondents or from the learned Government Pleader appearing on behalf of the respondents as to why they detained the detenu in the prison from 01.06.2016 to 10.06.2016. More over in all the cases registered under the Preventive Detention Act, the detenu was released on bail on 01.06.2016 and thereafter all the crimes registered against him were quashed by this Court. The only case pending against the detenu is Crime No. 317 of 2016 registered on the file of SHO, Police Station, Saket, New Delhi.

16. It is also not in dispute that all the cases registered against the detenu are on account of a single incident of cheating the companies registered under the Companies Act. It is admitted fact that in all the matters except the case registered at Saket Police Station, New Delhi in FIR no. 317 of 2016, the detenu has already compromised with the complainants therein and all those crimes have been quashed by this Court.

17. The case of the respondent is that the detainee had been cheating due to which creating large scale fear and panic among the people, adversely affecting the public order. He was involved in as many as five offences in the limits of Hyderabad Police Commission rate and also in New Delhi. However, no rowdy sheet has been opened against the detenu as per the Andhra Pradesh Police standing orders.

18. If the detainee was habitually committing crimes, we do not find any reason for the respondents not to open a rowdy sheet against him to prevent from committing offences. If the activities of the detainee were really causing prejudicial to the maintenance of public order, the police as a first step should have opened a rowdy sheet.

19. Detaining a person under the provisions of the Act, in other words amounts to curtailment of his liberties and denial of civil rights without facing trial. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and viewed from time to time. Taking into consideration these factors, the Legislature has specifically provided the mechanism of "Advisory Board" to review the detention of a person. The detainee is under detention since 10.06.2016 is deterrent to the rights of the detainee. Thus, he has completed almost eight months under detention.

20. Accordingly, as discussed herein above and by going through the decisions of the Apex Court as well as this Court, in our considered opinion, the detenu cannot be considered as "Goonda" and there is no threat from him to the peace, tranquility and social harmony in society. As on date, there is no crime registered in the State of Telangana. In view thereof, the order passed by the second respondent dated 5.6.2016 is not sustainable and the same is accordingly quashed.

21. For the foregoing discussion and in the result, the Writ Petition is allowed and the third respondent-Superintendent of Police, Central Prison, Chanchalguda Jail, Hyderabad is directed to set the detainee, by name, Tarun Gupta @ Amrit Sabharwal, S/o Late Uma shankar Gupta, at liberty forthwith, if not required in any other case.

22. Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.