

(1974) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5562 of 1974

Jagadish Prasad Gupta detenu, Central Jail, Hyd.

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 28-11-1974

Acts Referred:

Citation : (1974) 11 AP CK 0021

Hon'ble Judges : Muktadar, J;Chinnappa Reddy, J

Bench : Division Bench

Advocate : P. Babulu Reddy and P. Prabhakara Reddy, for the Appellant;

Judgement

Chinnappa Reddy, J.—On 16-10-1974 we directed the release of the detenu and announced that we would give our reasons later. We now proceed to state our reasons. We confess that we are not a little perturbed, by the very casual and often indifferent manner in which orders of detention appear to have been made in some of the cases that have come before us recently. In fact, in some cases, we were left with an uneasy feeling that the very carelessness was designed to furnish ammunition for attack. We do hope, it was not so, but that it was mere carelessness. But, if it was carelessness, concerned as we are with the liberty of the subject, we must hasten to say that detaining authorities should set with great caution, utmost circumspection and a deep regard for fundamental liberties. To act in any other manner, is truly unpardonable. To detain a person without trial, is indeed a serious matter. It offends the ordinary standards of fair-play observed and well established in democratic countries. That is why Courts of justice" accustomed to procedures involving fair-play, insist upon strict compliance with the safeguards prescribed by the Constitution and by the Parliament, where such detention becomes inevitable.

2. Turning to the facts of the present case, on 4-9-1974, the Commissioner of Police, Hyderabad made an order for the detention of the petitioner u/s 3 (1) (a) (iii) of the Maintenance of Internal Security Act. However, the petitioner was not arrested till 26-9-1974. According to the respondents, he could not be arrested

because he was absconding. According to the petitioner, he was always available, and he surrendered himself to the Superintendent, Central Jail, Hyderabad on 26-9-1974 as soon as he came to know of the detention order. For the purposes of the present case, it is immaterial way he was not arrested till 26-9-1974. What is material is the circumstance that he surrendered to the Superintendent, Central Jail, Hyderabad on 26-9-1974. The Asst. Commissioner of Police who was informed about it, served the order of detention dated 4-9-1974 on the petitioner. A fresh order of detention dated 26-9-1974 was served on the petitioner in the Central Jail, Hyderabad, The petitioner was served with the grounds of detention of 30-9-1974.

3. The grounds of detention allege that the petitioner is a partner of M/s. Royal Laboratories, and M/s. Royal Medical Hall. On 21-8-1974, 22-8-1974, 23-8-1974 and 29-8-1974, the Assistant Drug Controller, and two Drug Inspectors inspected the Laboratory and the Medical Hall and discovered the "malpractices" mentioned in the grounds. The first "malpractice" mentioned in the grounds relates to the sale of "pethidine" The allegation is that during the period from 1-1-1972 to 21-3-1974, the petitioner had manufactured 4,62,053 ampoules of pethidine. Out of them, 900 ampoules were used for analysis. The sale records of Royal Medical Hall showed that during that period 3,93,675 ampoules of pethidine had been sold. Therefore, the petitioner should have been in possession of 68, 378 ampoules. But, on physical verification of the stock on hand, it was found that the petitioner was in possession of 24,000 ampoues only. The remaining 43,070 ampoules were un-accounted for, leading the detaining authority to conclude that the petitioner had "indulged in malpractice in respect of sale of pethidine to make undue profits", thereby disrupting the supply of an essential commodity. The second "malpractice" mentioned in the grounds is that 40 bottles of 450 ml. of spiritus aetheris nitrosal bearing the label "used before February, 1974/Batch No. 422" were, found in the Royal Medical Hall on 28-8-1974. This led the detaining authority to conclude that the petitioner had stored for sale time-barred drugs and that he had thereby caused disruption of the supply of wholesome drugs essential to the community. The grounds of detention allege that it has become necessary to detain the petitioner with a view to prevent him from further acting in a manner prejudicial to the maintenance of supplies essential to the community.

4. In this application for the issue of a writ of Habeas Corpus, apart from raising the usual questions regarding the non-existence and vagueness of the grounds of detention, Sri P. Babulu Reddy, learned counsel, raised a formidable question of law which appears to us to be practically unanswerable. He argued that under Sec. 3(3) of the Maintenance of Internal Security Act, the first order of detention dated 4-9-74 ceased to be in force after the expiry of twelve days as it was not approved by the Government within that period, that under Sec. 14 (2) a fresh order could only be made "where fresh facts have arisen but that in the present case there were no fresh facts and therefore the second order of detention was illegal.

5. Sec. 3(3) of the Maintenance of Internal Security Act stipulates that an officer making an order of detention shall forthwith report the fact to the State Government together with the ground on which the order has been made, etc. It further provides that no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Govt. The provision is plain and it is clear that the period of twelve days has to be reckoned from the date of the making of the order of detention and not from the date of detention. This is unlike, for example, the provision in Sec. 13 of the Act which prescribes the maximum period for which a person may be detained as twelve months from the date of detention, or, for example the provision in S. 8 of the Act which prescribes that the grounds of detention should be served on the detenu within five days from the date of detention. Thus irrespective, of whether the person sought to be detained is arrested or not, the approval of the Government for the order of detention shall be obtained within twelve days after the making of the order; otherwise, the order will cease to be in force. If the person sought to be detained cannot be apprehended, Sec 7 provides for the further procedure to be followed. But neither Sec. 7 nor any other provision of the Act exonerates the detaining authority from complying with Sec. 3 (3) of the Act. This position was not disputed before us by the learned Public Prosecutor. Indeed, it cannot be disputed having regard to the clear language of the provision. In the present case the detaining authority (the Commissioner of Police, Hyderabad) did not even bother to seek the approval of the Government neither before nor after the expiry of the period of twelve days after the making of the order of detention dated 4-9-74. He gave his reasons in the counter-affidavit in the following words: "It is submitted that the order dated 4-9-74 was not forwarded to the Government for approval within 12 days, because the attempts to apprehend the detenu were in progress and I am of opinion that it is not necessary to forward it instantly but as early as possible before the expiry of twelve days. Meanwhile I was busy in attending to unusual urgent problems and the time of twelve days expired". The explanation is far from convincing. Sec. 3 (3) required him to forward the order of detention forthwith. The twelve days time given by the provision was not intended for his benefit. It was meant for the Govt. to enable it to consider the matter in order to express its approval or disapproval. A detaining authority cannot forward the order of detention on the twelfth day and expect the Government to express its approval or disapproval forthwith. That would indeed be reversing the intentment of the provision. Having allowed the period of twelve days to elapse, he did not even withdraw the order which he had entrusted to his subordinate for execution. His subordinate, the Asst. Commissioner of Police, Division I, who served the order dated 4-9-74 on the petitioner, stated in his affidavit that he did not know that the order had ceased to be in force. We are compelled to say that the statements of the Commissioner of Police and the Asst. Commissioner of Police are poor, nay sad commentaries on the working of the Maintenance of Internal Security Act and the officers to whom the working of the Act and therefore the liberty of the subjects is entrusted.

6. The question for consideration is what is the effect of the expiry of the first order of detention on the second order of detention dated 26-9-1974, Section 14 (2) of the Maintenance of Internal Security Act is in the following terms;

The revocation or expiry of a detention order shall not bar the making of a fresh detention order u/s 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

7. This provision therefore enables a fresh detention order to be made if fresh facts have arisen after the date of expiry of the previous order of detention and if the satisfaction of the Government or officer that such an order should be made is based on such facts. The grounds of detention dated 30-9-1974 which we have summarized earlier clearly relate to facts which arose prior to the earlier order of detention. Therefore the order of detention dated 26-9-1974 is prima facie contrary to the provisions of Sec. 14 (2) of the Act and therefore illegal. The learned Public Prosecutor, however, argued that it was not necessary that every one of the facts should have arisen after the expiry of the previous order of detention. It was enough if some of the facts came to the knowledge of the detaining authority subsequent to the expiry of the first order of detention. He submitted that the discovery of a fact was itself a fact and therefore if facts came to the knowledge of the detaining authority subsequent to the expiry of the first order of detention, it was open to the detaining authority to base the second order of detention on such facts. He pointed out that in regard to the sale of pethidine the detaining authority did not have before him all the relevant facts as the matter was then still under investigation when the first order of detention was made. He invited our attention to the statement in the counter-affidavit of the Commissioner of Police that on 19-9-74 the Additional Director, Vigilance Cell, had forwarded additional information in regard to the manufacture and sale of pethidine. We are not inclined to accept the submission of the learned Public Prosecutor. The submission appears to us to be plainly in the teeth of the language of sec. 14 (2) of the Act. If Parliament intended that facts coming to light after the revocation or expiry of the earlier order of detention could form the basis of a later order, nothing could have been easier for Parliament than to say so. Parliament, being conscious that the Maintenance of Internal Security Act is an encroachment on basic liberties, has imposed some restrictions and provided some safeguards against unbridled exercise by the executive of the powers under the Act. One safeguard is that the order of detention will cease to be in force if the Government does not approve the same within 12 days. Another safeguard is that the detenu must be furnished with the grounds of detention within five days of the date of detention. Another important safeguard is the provision for placing the order of detention before the Advisory Board within thirty days from the date of detention. An important restriction on the power to detain is the provision prescribing the maximum period of detention as one year from the date of detention. Yet another restriction is the provision in

sec. 14 (2) that on the expiry or revocation of an order of detention a fresh order can only be made where fresh facts have arisen after the date of expiry or revocation. If Section 14 (2) is viewed in the scheme of these safeguards and restrictions, it is impossible to accept the interpretation placed upon the provision by the learned Public Prosecutor. If the argument of the learned Public Prosecutor is accepted it may throw the door open for the circumvention of the provision prescribing the maximum period of detention as one year. On the other hand the view taken by us, and that we think is the intention of Parliament, will compel detaining authorities to make orders of detention with care and caution and without the snug satisfaction that if an order of detention expires or is revoked another order may always be made. The learned Public Prosecutor queried; "What if the first order of detention was based on unsubstantial grounds and more substantial grounds come to light after the expiry or revocation of the first order of detention?" The answer is simple, the detaining authority ought never to make an order of detention on unsubstantial grounds. But if he does that he cannot complain that he cannot make a second order of detention on facts which have arisen prior to the expiry of the first order of detention. That is why we said that our interpretation of the design of Parliament is conducive to the exercise of greater care and caution by the detaining authorities.

8. In *Kshetra Gogoi Vs. The State of Assam*, it was argued before the Supreme Court that the fact that a detenu while in preventive custody pursuant to an earlier order of detention had been maintaining links with underground rebels was a fresh fact which could form the basis of a second order of detention. The Supreme Court negated the contention because such fact could not be said to have arisen after the expiry of the previous order of detention. Though the fact arose after the making of the earlier order of detention it was not a fact which arose after the expiry of the previous order of detention, They observed :

.... even if we accept that such links were maintained this additional ground motioned does not satisfy the requirements of Section 13 (2) of the Act (corresponding to Section 14 (2) of the present Act) because the only allegation is that the links were maintained during the period of preventive detention. u/s 13 (2) what is required is that fresh facts should have arisen after the expiry of the previous detention. Facts arising during the period of detention are, therefore, not relevant when applying the provisions of section 13 (2).

9. It is thus seen that the Supreme Court was of the view that facts which arose after the making of the order of detention but before its expiry could not form the basis of a second order of detention notwithstanding the fact that such facts could never have formed the basis of the earlier order of detention.

10. In *Masood Alam etc. Vs. Union of India (UOI) and Others*, the Supreme Court emphasised the restrictive and watch dog aspect of Section 14 of the Act.

11. They said Section 14 speaks of revocation or expiry of a detention order. The principle underlying this section has its roots in the vital importance attached to

the fundamental right of personal liberty guaranteed by our Constitution. The Act fixes the maximum period of detention to be 12 months from the date of the detention with the proviso that the appropriate Government can revoke or modify the detention order at any earlier time : Section 13. It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to the camouflage of making a fresh order operative soon after the expiry of the period of detention, as also to minimise resort to detention orders that Section 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made".

12. The Supreme Court went on to say.

The power of preventive detention being an extraordinary power intended to be exercised only in extraordinary emergent circumstances the legislative scheme of Sections 13 and 14 of the Act suggests that the detaining authority is expected to know and to take into account all the existing grounds and make one order of detention which must not go beyond the period fixed.

13. In Har Jas Dev Singh Vs. State of Punjab and Others, the passage first extracted by us in Masood Alam etc. Vs. Union of India (UOI) and Others, was quoted with approval and it was held that the circumstance that the detenu had been released on bail in a criminal case subsequent to the expiry of the order of detention was not a fresh fact on which a second order of detention could be based.

14. In Chotka Hembram Vs. State of West Bengal and Others, the Supreme Court quoted with approval the passage second extracted by us from Masood Alam etc. Vs. Union of India (UOI) and Others, We are, therefore, of the view that the incidents which accrued prior to the expiry of the earlier order of detention cannot furnish grounds for making a second order of detention.

15. There is yet another reason why the second order of detention cannot be sustained in the present case. Even assuming, for the sake of argument, that the first ground of detention which concerns pethidine is a fresh fact it cannot for a moment be contended that the second ground relating to the storage of spiritus aetheris nitrosal is afresh fact. The learned Public Prosecutor conceded that it was the basis of the earlier order of detention. Its inclusion in the grounds of detention forming the basis of second order of detention must, in our opinion, vitiate the second order of detention. The learned Public Prosecutor argued that it was not necessary that the second order of detention should be based on entirely fresh facts but that it was enough if there was even a single fresh fact along with several old facts. We do not agree with this submission. Section 14 (2) prescribes that satisfaction of the detaining authority in making a second order of detention must be based on the fresh facts. If it is based on fresh as well as old facts it must be held to offend section 14 (2) of the Act. The learned

Public Prosecutor relied on the decision of the Supreme Court in Kshetra Gogi's case *supra* and argued that past facts PLUS fresh facts could form the basis of a second order of detention. The question was not considered by the Supreme Court in that case. The only question which was considered was, whether a fact which arose during the detention of the detenu pursuant to an earlier order of detention could be said to constitute fresh fact. The decision does not help us in answering the question before us. In view of the clear language of Section 14 (2) that the satisfaction must be based on fresh facts, we do not agree with the submission of the learned Public Prosecutor.

16. In the view that we have taken on the questions arising on the interpretation of section 14 (2) of the Act, it is unnecessary for us to consider in detail the submissions made by the learned counsel for the petitioner on the question of vagueness and non-existence of the grounds of detention. We would, however, like to make a brief reference to some aspects of the case with a view to emphasise what Courts have always said about grounds of detention, that it is essential that grounds of detention should be precise and should contain no element of vagueness and inexactitude. In the present case the grounds of detention mention that the petitioner manufactured 4,62, 253 ampoules of pethidine between 1-4-1971 and 21-8-1974 and that the records of the Royal Medical Hall showed that during that period the sold 3,93,675 ampoules. While he should be in possession of 67,478 ampoules of pethidine, physical verification of the stock on hand showed that he had in his possession 24,000/- ampoules only. 43,078 ampoules were thus unaccounted for. The statement in the grounds of detention is categorical that physical verification showed that the petitioner was in possession of 14,000 ampoules only. In the affidavit filed in support of the writ petition it was asserted that a quantity of 10,000/- ampoules "in bond" were not taken into account by the authorities. In the counter affidavit filed by the Asst. Drug Controller it was stated "I submit that the statement of the detenu that 10,000 ampoules are in the bond area is denied. When the premises of the factory was checked in presence of representatives of the detenu, I found 24,000 ampoules outside the bond area and 900 ampoules were taken for analysis..... Thus I submit there is no balance in the bond area and the detenu is maintaining false accounts." In view of the assertion and counter-assertion I directed the Commissioner of Police to depute a Deputy Commissioner of Police to verify whether there were any ampoules "in bond". The Deputy Commissioner of Police who went to the premises of the Royal Laboratories found 200 boxes containing pethidine ampoules "in bond". On opening the boxes it was found that they contained 9,995 ampoules of which 4,996 related to batch No. 1290 manufactured in March 1973 and 4, (sic)99 related to batch No. 1364 manufactured in August, 1973, it is thus clear that the statement in the counter-affidavit that there were no ampoules "in bond" is not correct. It is also clear that these ampoules were not taken into account in determining the number of ampoules which were not accounted for by the petitioner. It was sought to be argued by the learned Public Prosecutor that these ampoules related to earlier

batches. The very fact that ampoules relating to latter batches had been sold while those relating to earlier batches were kept "in bond" was a suspicious circumstance and that was the reason why the ampoules held "in bond" were not taken into account by the authorities. But that was not the basis on which the order of detention was made or on which the counter proceeded in this case. Again in the very books seized by the authorities our attention was drawn by the learned counsel to entries relating to one ml. ampoules which had not been taken into account by the authorities. The learned Public Prosecutor urged that even if they were taken into account there would still be left a quantity unaccounted for. That is, of course, beside the point. The question is, whether the allegation as made in the order of detention exists as a fact. While there may be discrepancies and suspicious fetures in the accounts of the petitioner the discrepancies and suspicious features are not the same or of the same magnitude as mentioned in the grounds, We once again wish to emphasise that every allegation in the grounds of detention must be exact.

17. Before parting with the case there is one thing more that we wish to say. The learned Public Prosecutor reportedly used the phraseology of some learned Judges who described the jurisdiction of preventive detention as a jurisdiction of suspicion an unhappy, though attractive, phrase. We must however say that we have no doubt that the learned Judges, who used the epxres sionmeant suspicion, in the sense of apprehension, about future activity and never meant suspicion in relation to past incidents. They never meant that as order of detention may be made on a suspicion of involvement in past incidents. Basic facts must always constitute the foundation and they must exist. Interences of fact from existing facts are of course, permissible. But such permissible inferences of fact should never be confused with bare suspicion. We spent a considerable time on the case and we have written so much not because we found any difficulty in resolving the issue but because of the uneasy feeling expressed by us at the outset. We part with the case with the fond hope that our fears will prove unfounded, Advocate"s fee Rs. 350.