
(2014) 12 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31023 of 2014

K. Venkatesh

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2015) 2 ALD(Cri) 117

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : D.V. Seetharama Murthy for N. Ashwani Kumar, Advocate for the Appellant

Judgement

Vilas V. Afzulpurkar, J.—Petitioner, represented by his wife and next friend, has filed this writ petition seeking a Mandamus to direct the respondents not to initiate any proceedings under the provisions of A.P. Act 1 of 1986 including passing of orders of preventive detention.

2. When this writ petition came up for admission, I had serious doubt about the maintainability of the writ petition, as it seeks anticipatory Mandamus. Hence, at the admission stage, I have heard the learned senior counsel for the petitioner and learned Advocate General (AP) and the writ petition is being disposed of by this order.

3. It is alleged that the petitioner is currently lodged in Kadapa Central Prison, in judicial custody, in pursuance of the crime registered against him in FIR. No. 153 of 2014 by respondent No. 6 for offences punishable under the A.P. Forest Act, 1967, Indian Penal Code and Prevention of Damage to Public Property Act, 1984. Petitioner is stated to be a resident of Chennai, Tamil Nadu and is stated to be in the business of Transport and real estate. In the course of his business, it is stated that he has to travel to various places in Andhra Pradesh. It is alleged that he was arrested by the police in Tirupati on 26.09.2014 and the aforesaid FIR was registered.

4. While we are not concerned with allegations of the aforesaid FIR, petitioner himself has stated that he is found involved in cases registered in FIR. No. 152 of 2014 before respondent No. 6; Cr. No. 64 of 2014 registered before the Narayanavanam Police Station and Cr. No. 96 of 2014 registered before the Chittoor II Town Police Station.

5. Learned senior counsel for the petitioner submits on the basis of the decision of the Supreme Court in S.M.D. KIRAN PASHA v. GOVERNMENT OF A.P. that the petitioner is entitled to seek protection from imminent infringement of fundamental right under Article 21 of the Constitution of India. Learned senior counsel, therefore, submits that under A.P. Act 1 of 1986, the authorities are entitled to pass orders as to preventive detention and thereby, the remedies of the detenu under ordinary criminal law get eclipsed and hence, such preventive detention orders are ex facie violative of Article 21 of the Constitution of India. Learned senior counsel submits that even if the offences alleged against the petitioner are taken on their own face value, they are all offences relating to law and order and cannot be said to lead a threat to public order so as to invoke the provisions of the preventive detention laws against the petitioner. The present writ petition, therefore, came to be filed on the basis of various reports appearing in newspapers where the first respondent is threatening to resort to A.P. Act 1 of 1986 relating to various offences. Hence, the petitioner seeks a Mandamus directing the respondents not to invoke the provisions of A.P. Act 1 of 1986 against him.

6. Counter affidavit is filed by respondent No. 6 wherein it is stated that the writ petitions is not maintainable, as no such action is initiated against the petitioner by invoking the provisions of A.P. Act 1 of 1986. Counter affidavit deals with various factual contentions of the petitioner with respect to the crimes registered against him. However, that is not necessary to be traversed here. The allegation of the petitioner that respondents have decided to invoke the provisions A.P. of Act 1 of 1986 is denied as it is without any basis. It is stated that under ordinary criminal law, the petitioner has remedy with respect to the FIRs already registered against him and that the apprehension of the petitioner is unfounded.

7. Learned Advocate General appearing for the respondents contended that the prayer of the petitioner is clearly anticipatory and omnibus, which cannot be granted, as the decision relied upon by the learned senior counsel for the petitioner was not approved in later decision of the Supreme Court in ADDITIONAL SECRETARY, GOVERNMENT OF INDIA v. ALKA SUBHASH GADIA. Learned Advocate General also placed strong reliance on a decision of this Court in ANANTHA UDAYA BHASKAR RAO v. ELECTION COMMISSION OF INDIA. Learned Advocate General submits that since there is no infringement of petitioners fundamental rights, there is no reason to entertain the present writ petition, as the petitioner is not beyond the law.

8. Learned senior counsel for the petitioner by way of reply submits that the writ petition is maintainable against the anticipated invocation of preventive detention

orders as clearly held in S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others, . Learned senior counsel also submits that the apprehension of the petitioner is valid, as the counter affidavit does not deal with the said specific allegation. Learned senior counsel also placed reliance upon another decision of the Supreme Court in DEEPAK BAJAJ v. STATE OF MAHARASHTRA wherein the Supreme Court had considered pre-execution challenge to detention order and held that such challenge is maintainable on any of five grounds mentioned in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, . Learned senior counsel also relied upon a decision of the Supreme Court in STATE OF MAHARASHTRA v. BHAURAO PUNJABRAO GAWANDE wherein also the pre-execution challenge to detention order was considered and held permissible on the touchstone of exceptions carved out in ALKA SUBHASH GADIAS case (supra).

9. Strong reliance having been placed on S.M.D. KIRAN PASHAs case (supra) which, no doubt, held that if any right is yet to be violated but is threatened with violation, the citizen can move the Court for protection of his right. Protection of right is to be distinguished from its restoration or remedy after violation. The question may arise what precisely may amount to threat or imminent violation. Law surely cannot take action for internal thoughts but can only act on overt acts and allowed the writ petition filed by the detenu on the ground that the petitioner is entitled to approach the Court for pre violation protection. The decision of the Supreme Court in ALKA SUBHASH GADIAS case (supra) reviewed the entire case law including the decision in S.M.D. KIRAN PASHAs case (supra). It was held in para 30, as under, the relevant portion is extracted hereunder:

30. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary power of judicial review to interfere with the detention orders prior to their execution on any other grounds does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

Relevant paras 32 and 33 are also extracted hereunder:

32. This still leaves open the question as to whether the detenu is entitled to the order of detention prior to the execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of

the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, as stated earlier, the Court can and does hear such petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it will, however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the Courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so or will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the Court and it has to be exercised judicially on well-settled principles.

33. To the extent that the decision of this Court in *S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others*, and the decisions of all the High Courts are contrary to or inconsistent with the view taken by us above, they will be deemed to have been disapproved and overruled.

Evidently, from the ratio aforesaid, the decision in *S.M.D. KIRAN PASHA's* case (supra) stands disapproved by the aforesaid decision of the Supreme Court.

10. In the decision in *Anantha Udaya Bhaskar Rao Vs. The Election Commission of India and Others*, I had an occasion to consider whether anticipatory breach of right of petitioner to contest elections can be enforced by Article 226 of the Constitution of India. I had answered the said question in the negative. In the said decision, I had referred to various decisions including *ALKA SUBHASH GADIA's* case (supra).

11. The admitted facts remain, therefore, that no proceedings under the A.P. Act 1 of 1986 are taken against the petitioner so far and that perhaps is the purpose of filing the present writ petition, as thereby, any such invocation under the A.P. Act 1 of 1986, even if contemplated by the respondents, stands postponed during the pendency of this writ petition. Since the law declared by the Supreme Court in *ALKA SUBHASH GADIA's* case (supra) authoritatively holds that at the

pre-detention stage, the jurisdiction of this Court can be invoked only in five limited contingencies, as extracted above. Since the present case does not fall in any of the said categories, in my view, the anticipatory relief, as sought for by the petitioner, cannot be granted. The decision of this Court in ANANTHA UDAYA BHASKAR RAOs case (supra) clearly covers the said aspect against the petitioner. Though the learned senior counsel for the petitioner tried to distinguish the said decision on the ground that that case did not involve any anticipated infringement of fundamental right, in my view, in the light of the ratio of the decisions of the Supreme Court, as aforesaid, it cannot be said that the case of the petitioner stands on a higher footing than the ratio as in ANANTHA UDAYA BHASKAR RAOs case (supra).

The writ petition, therefore, fails and is accordingly dismissed. As a sequel, miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.